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Supreme Court of the United States

OCTOBER TERM, 1961

No. 312

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS FOR MERRITT W. GREEN, II, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED AUGUST 14, 1961
CERTIORARI GRANTED NOVEMBER 6, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

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[fol. 1]

IN THE COURT OF APPEALS OF LUCAS COUNTY, OHIO

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS FOR MERRITT W. GREEN, II.

PETITION FOR WRIT OF HABEAS CORPUS—Filed June 7, 1960

To the Honorable Court of Appeals, in and for the Sixth Appellate District of Ohio:

Your petitioner, Merritt W. Green, attorney for the above named Merritt W. Green II, respectfully represents that said person is imprisoned and restrained of his liberty by William Hirsch, Sheriff of Lucas County, Ohio, in the county jail thereof without legal authority, but under the color of a pretended commitment, a copy of which commitment cannot be procured at this time without impairing the efficiency of this remedy.

Your petitioner, therefore, prays that a writ of habeas corpus issue to said William Hirsch according to law and that the said Merritt W. Green II be brought before this Court forthwith and be discharged from said illegal imprisonment and restraint of his liberty.

Merritt W. Green

[fol. 2]

IN COURT OF APPEALS OF LUCAS COUNTY, OHIO

JOURNAL ENTRY ISSUING WRIT OF HABEAS CORPUS AND ADMITTING PETITIONER TO BAIL—Filed June 7, 1960

This day Merritt W. Green, appeared in open Court, and filed his petition for writ of habeas corpus on behalf of Merritt W. Green, II, alleging that the latter is imprisoned and restrained of his liberty under the color of a pretended commitment, but without any legal authority.

It is hereby adjudged that a writ of habeas corpus issue to William Hirsch, sheriff of Lucas County, Ohio, or who-

soever is charged with the custody of Merritt W. Green, II, to appear before this Court at ten o'clock a. m. on Thursday, June 9th, 1960, and to have the body of said Merritt W. Green, II, and to appear and show cause, if any, he or they may have of the taking and detention of said Merritt W. Green, II.

It is further adjudged that pending the hearing and determination of said cause said Merritt W. Green, II, shall be released from custody upon his giving bond in the sum of five hundred ($500.00) dollars with surety to the satisfaction of the clerk of this Court.

Lehr Fess, Dudley F. Smith, Clyde L. Deeds, Judges.

[fol. 3]

IN COURT OF APPEALS OF LUCAS COUNTY, OHIO

PETITIONER'S BILL OF EXCEPTIONS—Filed November 23, 1960

Be it remembered, that upon the Hearing of the above-entitled cause, in the Court of Appeals, Third District Court of Appeals sitting by designation, in the April, 1960, term of said Court, said Hearing commencing on Thursday, June 9, 1960, before Judges Raymond Younger, presiding, George S. Middleton and J. Thomas Guernsey, the following proceedings were had, to-wit:

• • • • • • •

Judge Guernsey: Mr. Friberg, do you grant that the lawyer was engaged in Interstate Commerce?

Mr. Friberg: Do I grant what?

Judge Guernsey: That the lawyer was engaged in Interstate Commerce?

Mr. Friberg: Employer, that is correct.

Judge Younger: Was the Temporary Restraining Order against peaceful picketing?

Mr. Friberg: The order is.

• • • • • • •

Judge Guernsey: Do you claim that notwithstanding these facts that the Trial Court still had jurisdiction to issue the temporary restraining order?

• • • • • • •

Judge Middleton: Any agreement between counsel as to the matter in which you are going to present these facts?

Mr. Green: Yes. You mean the record, to make up the record for you?

Judge Middleton: Yes.

Mr. Green: I think we can do that very quickly. I think one thing should be added, that I forgot, and it is germane to your request, there is presently on file and was on file, [fol. 4] there was filed that afternoon even before this petition was filed, and presently pending, an unfair labor charge before the National Labor Relations Board. No question on that.

Mr. Ragan: That unfair labor practice charge has since been dropped.

Mr. Green: As part of the strike settlement?

Mr. Ragan: Yes.

Mr. Green: But at that time there was an unfair labor practice charge pending all the way up through this proceeding until he was sent to jail, there was also pending in the National Labor Relations Board an unfair labor practice charge.

Judge Middleton: The Board take any action?

Mr. Green: No, as he said, when they settled the strike they agreed to dismiss all the actions, including the unfair labor action charge.

Judge Middleton: Prior to the dismissal had there been a recognition of the application?

Mr. Green: Had been docketed but not a hearing on it. But, there was an action before the Board.

Mr. Ragan: If the Court please, the unfair labor practice charge was not based on the contract. It alleged in a vague sort of way that the company, the employer, Toledo Marine Terminals, had refused to bargain collectively, although at the time it was filed negotiations were almost continuously under way. I don't believe it has any bearing whatsoever in this case.

Mr. Green: I think in order for the Court to properly have a complete record it is necessary that all of the papers and pleadings that are now a part of the original case, number 188631, wherein the Toledo Marine Terminals, Inc.

was the plaintiff and International Longshoremen's Asso-
[fol. 5] ciation and others were the defendants, are necessary. I think all of that is necessary, and I think with counsel can we agree?

Mr. Friberg: Let us introduce the entire Common Pleas Court file in the case.

Mr. Green: Yes, and that would include the petition which was filed initially, which has attached thereto a contract which is the so-called basis of the action of violation which indicates, I might parenthetically say, that the contract was not a completed contract. It will also include a motion filed by the plaintiffs for temporary injunction, a petition for removal to the United States District Court, a remand from the United States District Court, an affidavit of contempt filed by the plaintiffs against one picket, Roy Moon. I might say that by agreement of counsel and in Court's Chambers below, on Tuesday or Wednesday, that they agreed between them that the way to expedite this whole thing was for the union to bring in four of the pickets who were actually picketing on a contempt charge rather than filing some more, and then counsel for the union, the petitioner here, agree that he would stipulate that they were out picketing, so that they could try to get an immediate finding on the contempt action so the question could be heard some place along the line.

Judge Younger: The 4th one you named, "Remaned (sic) for the United States Court," was that refusing to take jurisdiction?

Mr. Green: Actually it was not a refusal. It reads, "Counsel for the defendants have agreed not to oppose the order of the Court remaned." (sic) It was by agreement of counsel that it should come on back here.

[fol. 6] Mr. Ragan: If the Court please, I would like to correct that statement. It was on the decision of Judge Kloeb, Judge Frank Kloeb, on the ground, including the fact that he felt that the Federal District Court did not have jurisdiction, and that the State Court had full jurisdiction.

Mr. Green: I respectfully disagree with that. Judge Kloeb said he had jurisdiction to take it on removal, no question about it. He questioned whether he had jurisdiction not because this Court had jurisdiction, because the

NLRB was the only one that had jurisdiction at that time, a labor dispute.

Judge Middleton: You are arguing.

Mr. Green: Yes, that is right. Yes, I think that includes everything except the three exhibits, pictures, which are in and are admitted, isn't that right?

Mr. Ragan: Yes.

Mr. Green: Pictures showing the picket line. It doesn't show any pickets, just shows an automobile sitting there, and I assume pickets sitting in there, and a sign saying "strike." No allegation or claim any place along the line that there was any violence, intimidation, public disorder, blocking of entrances or anything like that. This is strictly a peaceful picketing case. No claim that there was anything but peaceful picketing.

Judge Younger: The three pictures are not to be introduced?

Mr. Green: Yes, they are part of the court records below, and also part of this record here. Then there will also be the findings or the charge in contempt filed by Judge McCabe on Monday of this week, filed June 6th at 12:25 p. m. Now, and of course the return would be, and I think [fol. 7] there must be an order of commitment, although I don't see one in the file. The Court may have the order of commitment to the sheriff. I mean, it says here is a warrant to commit to jail.

Judge Guernsey: Returned along with the file of this habeas corpus action.

Mr. Green: The Court will notice that all of the contempt proceedings at every stage were all under this other number, and it doesn't change until it gets over here. Now, we would like to stipulate with counsel, and I understand from our previous hearing that they have no disagreement with this, that all of the evidence introduced at the hearings of the Court below be introduced as the evidence in this writ of habeas corpus proceedings, upon which the Court can give consideration in its determination. That would be the transcript of proceedings in contempt containing 34 pages, 1 to 34, and indicated that the proceedings were those of June 1, 1960, and then we would by agree-

ment of counsel introduce as part of this record before this Court the transcript of proceedings in contempt before the Honorable Judge McCabe on June 7, 1960, starting at page 1 and going through page 62. These are transcripts of testimony prepared by the official court reporter, but not certified because it didn't come up by way of bill of exception. Can it be agreed by and between counsel that that may be accepted as the evidence in this case?

Mr. Friberg: So agreed.

Judge Younger: Including the pleadings previously mentioned?

Mr. Friberg: Including the pleadings of and the entire Common Pleas Court file.

[fol. 8] Mr. Green: We do not have in this record the entry of dismissal, if it is of any importance, or I don't believe the docket sheet is in the file at this time showing the dismissal this morning of the original case. I say, it is of no particular importance.

Mr. Friberg: It may be stipulated that this morning a journal entry was filed dismissing with prejudice the case in the Common Pleas Court, which is numbered 188631. Is that what you want, Mr. Green?

• • • • • • •

Mr. Green: We agree that there was a motion to remand, and pursuant thereto the Court issued the Court order that is part of the file. If you want to put it in we agree.

Mr. Friberg: I would like to have it in the record, please.

Mr. Green: All right with me.

Mr. Ragan: The journal entry of course that was filed this morning is now part of the record.

Mr. Green: At this time I would like to have the petitioner sworn.

Judge Younger: The Court will receive the evidence offered, the pleadings, transcripts as counsel have agreed upon, that will be received and subject to its being, the Court's determining whether or not it is relevant and competent. If the Court concludes that it is not relevant

or competent, or any part of it is not we will rule upon it at that time.

• • • • • • •

Mr. Green: I asked this witness to be sworn because now being sworn I want to ask counsel if they will stip-
[fol. 9] ulate that if he were to testify here today under oath that he would testify to the same facts and testimony given in the Court below, through and by his counsel, reading his statement of testimony into the record after the Court refused to permit him to be sworn or to give testimony.

• • • • • • •

So, the purpose of this today is to have this lawyer's sworn testimony before the Court which would be the same testimony which appears in the transcript of the proceedings in contempt of June 7, 1960, starting at page 25 and continuing on through with some interruptions to page 39 of that same transcript. And again my request then is to ask counsel if they will stipulate that if he did proceed to testify under oath he would testify the same as he did there, and then we can save the Court a lot of time.

Mr. Friberg: We will so stipulate.

Judge Younger: The Court will take a five minute recess.

Mr. Green: I think that is the record.

Mr. Friberg: As far as I know those are the exhibits.

Mr. Green: Those contain, I think, all of the evidence we will put in.

Mr. Friberg: We have no evidence or testimony to offer.

Judge Younger: All right, we will be ready for arguments after recess. We will take a recess at this time.

(Recess at 11:00 o'clock a. m.)

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[fol. 10]

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

TOLEDO MARINE TERMINALS, INC., an Ohio Corporation,
Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AFL-CIO,
LOCAL 1317-A, et al., Defendants.

PETITION—Filed May 27, 1960

1. Plaintiff, Toledo Marine Terminals, Inc. states that it is a corporation organized and doing business under the laws of the state, having its main office at 26 Main Street, Toledo, Ohio; that the International Longshoremen's Association, AFL-CIO, Local 1317-A, is not incorporated and is a voluntary association of individual persons known as a labor organization or union, and that the principal address of said Local 1317-A is to plaintiff unknown, and that for want of such information the residence address of defendant Roy Moon is believed to be the Toledo address of said Association. Plaintiff avers that Toledo Marine Terminals, Inc. is engaged in the business of operating a marine terminal, warehouse and terminal in the storage and shipping of various commodities.

2. Plaintiff avers that defendants, Roy Moon, Charles Walls, Milton J. Shoecroft and Cleo Syph, are officers, [fol. 11] business agents, representatives and members of said association and said association is the certified bargaining agent for the employees of the plaintiff, having been certified by the National Labor Relations Board on November 6, 1959.

3. Plaintiff states that defendants, John Albert and Sam Crawford, are representatives of said Local 1317-A and are acting in such capacity in the actions hereinafter complained of.

4. Plaintiff further states that other members of said association are unknown to plaintiff and that the questions herein involved are of common general interest to the defendants and to all of the members of said association.

5. Plaintiff further avers that the individually named defendants are members and authorized representatives of said class of members and are sued individually and as representatives of the class, and that a trial of the issues herein may be fairly had with the defendants named herein as representatives of such a class. Plaintiff further avers that each of the individual defendants are sued, not only individually, but as members and agents, and that said individual defendants, for and on behalf of themselves and as agents, officers, and/or members of said defendant association are acting herein in organizing, promoting, prosecuting and conducting the acts and actions hereinafter specifically set forth of which the plaintiff complains.

6. Plaintiff avers that at the time of the filing of this petition there is no labor dispute existing between plaintiff company and defendant association; that plaintiff has negotiated with the defendant association through its committee consisting of the said Roy Moon, Charles Walls, Milton J. Shoecroft and Cleo Syph since November 6, 1959, [fol. 12] the certification date of said association; that numerous meetings were held between the representatives and officers of plaintiff company and said defendant association and the individual defendants for the purpose of negotiating a labor contract; that said meetings were conducted in part between the representatives of plaintiff and defendant association and more recently were conducted with the assistance of the Federal Mediation and Conciliation Service represented by Commissioner Harry Gray of Toledo, Ohio; that on Tuesday evening, May 24, 1960, at about 10:30 P. M., full and complete agreement as to a labor contract was reached in the office of Commissioner Harry Gray; that on this occasion and on repeated occasions prior thereto the defendants were aided in their negotiations by Mr. Walter Weaver of Cleveland, Ohio, a vice president and business agent of the International Longshoremen's

Association; that upon the arrival of agreement and repeatedly prior thereto said defendants named in this action and the said Mr. Weaver assured the representatives of plaintiff that they were fully authorized to negotiate and sign a labor contract; that said representatives were specifically made by the said Walter Weaver and the defendants at the conclusion of negotiations and in the presence of Commissioner Harry Gray.

7. Plaintiff further avers that on May 15, 1960, defendant association called a strike at the premises of plaintiff and began picketing at the entrance thereto; that on Tuesday, May 24, 1960, at about 10:30 P. M. upon arrival at agreement said pickets were immediately withdrawn by defendant association and the members thereof returned to work on Wednesday morning, May 25 and continued their employment throughout May 25 and 26, 1960; that plaintiff [fol. 13] from and after May 24, 1960 upon arrival of agreement honored the terms thereof in all matters and particularly with reference to agreed upon increases in pay rates.

8. Plaintiff further avers that pursuant to the agreement arrived at between plaintiff and defendant association as above stated, on May 24, 1960, the terms and provisions of the contract were revised and that on May 26, 1960, said contract was signed by the plaintiff in the person of F. C. Greenhill, executive vice president, and by defendant association in the persons of said Roy Moon, Charles Walls, Milton J. Shoecroft and Cleo Syph; that said contract is a legal and binding labor contract as to both plaintiff and defendant association, and a copy of said contract is attached hereto as Exhibit "A".

9. Plaintiff further states that at about 6:00 A. M. on the day of the filing of this petition, namely, May 27, 1960, defendant association began picketing at the entrance to the property of plaintiff company at 26 Main Street, Toledo, Ohio; that the causes and reasons for said action on the part of defendant association are in direct violation of said contract and specifically Article IX, Section 3 (a), which provides as follows:

"There shall be no stoppage of work caused by lockouts, walkout, sit down or slow up of any kind or nature whatsoever during the term of this agreement."

10. Plaintiff avers that said conduct on the part of defendant association in posting of pickets at the entrance to the company premises and the calling of a strike by so doing is an illegal and unlawful act on the part of defendant association and the individual defendants; that a continuation of said illegal and unlawful conduct of the defendants, which will continue unless enjoined by order [fol. 14] of this Court, will result in danger to life and limb of the employees of plaintiff company and irreparable loss and damage to property of plaintiff company, and that plaintiff has no adequate remedy at law. Furthermore, plaintiff avers that the continuance of such illegal and unlawful conduct of the defendants will disrupt the operations of the plaintiff and trade and commerce generally at the premises of plaintiff and the Port of Toledo; that at the time of the filing of this petition a foreign vessel is berthed at the premises of plaintiff and that plaintiff is unable to discharge or load cargo by reason of the foregoing acts of defendant association; that a large volume of cargo for export is now on the premises of plaintiff and that several vessels are now en route to the premises of plaintiff for the purposes of having such cargo loaded aboard for export.

11. Plaintiff avers that the continuance of such illegal and unlawful conduct and the acts of the defendants and others associated and participating with them will make it impossible for the company to continue its normal activities and to preserve, protect, maintain and enforce its rights, and thus such conduct has created an emergency of such great and serious nature as to require the issuance forthwith of a temporary restraining order.

12. Wherefore, plaintiff prays that pending final hearing and determination of the issues herein, a restraining order be issued forthwith against the defendants and each of them, their officers, agents, members and other persons associated with and acting in concert with the defendants,

and all others to whom knowledge of this order should come, restraining and enjoining them.

a. from interfering in any manner whatsoever with the plaintiff, its officers, agents, representatives, em-
[fol. 15] ployees and others having business with plaintiff company; from interfering by force, violence or in any manner whatsoever, with those desiring to enter and leave the aforesaid premises.

b. from picketing in any manner at or near the vicinity of the aforesaid premises at 26 Main Street, Toledo, Ohio, since such conduct constitutes an illegal strike and is in direct violation of the terms and provisions of the labor contract as above stated.

c. from loitering, grouping or congregating at or near approaches to, or on a public street or highway leading to said premises, or on any premises of plaintiff company, or on any driveway or roadway leading to the premises of plaintiff.

d. from interfering in any manner with the ingress to, or egress from said premises by land or by water of any trucks, cars, ships, or other conveyances of any kind.

e. from protecting, aiding, abetting, or assisting anyone in the commission of the aforesaid unlawful acts,

and plaintiff further prays that upon final hearing said restraining order be made permanent, and for such other and further relief to which plaintiff may be entitled.

Robert C. Ragan, Attorney for Plaintiff.

[fol. 16]

EXHIBIT A TO PETITION

Labor Agreement Between Toledo Marine Terminals, Inc. of Toledo, Ohio and The International Longshoremen's Association AFL-CIO, Local 1317-A.

The following agreement made and entered into this twenty-fourth day of May, 1960, by and between Toledo Marine Terminals, Inc., a corporation of the State of Ohio, having its principal offices at 26 Main Street, Toledo, Ohio, hereinafter called the Company, and The International Longshoremen's Association, AFL-CIO, Local 1317-A, hereinafter called the Union.

Article I.

Bargaining Agent

Section 1. (a) It is hereby agreed by and between the parties hereto that whereas said Union has by merger succeeded the International Brotherhood of Longshoremen, AFL-CIO, and said International Brotherhood of Longshoremen has on November 6, 1959, been certified by the National Labor Relations Board as the exclusive bargaining agent for the employees of the company in the appropriate bargaining unit of the company as established in Case No. 8 RC 3325 by decision dated April 2, 1959, and reported in 123 NLRB 71, said above designated Union is hereby recognized and acknowledged as the exclusive bargaining agent for all employees in said appropriate bargaining unit for the duration of this contract in respect to all matters concerning wages, hours and working condition of employment for said employees. The term employee or employees, as used in this agreement, shall be deemed to mean those engaged in stevedore and warehouse operations, such as stevedores, warehousemen, crane operators, signalmen, winchmen, gang leaders, and checkers.

[fol. 17] (b) It is expressly understood that the articles of this agreement do not apply to superintendents, assistant superintendents, supervisory executive employees, clerical employees, professional employees, guards and supervisory

personnel as defined by law. The Company reserves the right to hire checkers under provisions of Article X, Section 1. (b).

Article II

Membership

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Article III

Maintenance of Membership

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Article IV

Basic Work Period and Overtime Pay

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Article V

Reporting Time and Working Conditions

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Article VI

Holidays

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Article VII

Starting Time

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Article VIII

Wage Rates

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Article IX

Grievances and Disputes

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[fol. 18]

Article X

Management Rights

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Article XI

Safety

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Article XII

• • • • • • •

Article XIII

Termination Date

This agreement shall become effective on May 24, 1960, and shall remain in full force and effect until the 1st day of April, 1961 and year to year thereafter, unless either party desires to modify or terminate the agreement and communicates this desire to terminate in writing at least sixty (60) days prior to April 1, 1961 or of any subsequent year.

Executed at Toledo, Ohio, this twenty-sixth day of May, 1960.

Toledo Marine Terminals, Inc.

By F. C. Greenhill
F. C. Greenhill, Executive Vice Pres.

The International Longshoremen's Association, AFL-CIO

By (NOT SIGNED)

The International Longshoremen's Association, AFL-CIO, Local 1317-A

By Roy Moon
Charley Walls
Milton J. Shoecroft
Cleo Syph

[fol. 19]
IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

AFFIDAVIT OF CONTEMPT—Filed May 31, 1960

Robert C. Ragan, being first duly sworn, states that he is attorney for the plaintiff in the above captioned matter, and that defendant Roy Moon and all other defendants in said matter, and others acting in concert with said defendants, have disobeyed the order of this Court made on the 27th day of May, 1960, directing that he and they be restrained and enjoined from

(a) interfering in any manner whatsoever with the plaintiff, its officers, agents, representatives, employees and others having business with plaintiff company; from interfering by force, violence or in any manner whatsoever, with those desiring to enter and leave the premises of plaintiff.

(b) from picketing in any manner at or near the vicinity of the aforesaid premises at 26 Main St., Toledo, Ohio, since such conduct constitutes an illegal strike and is in direct violation of the terms and provisions of the labor contract between the parties.

(c) from loitering, grouping or congregating at or near approaches to, or on a public street or highway leading to said premises, or on any premises of plaintiff company, or on any driveway or roadway leading to the premises of plaintiff.

(d) from interfering in any manner with the ingress to, or egress from said premises by land or by water of any trucks, cars, ships, or other conveyances of any kind.

[fol. 20] (e) from protecting, aiding, abetting, or assisting anyone in the commission of the aforesaid unlawful acts.

and that the said Roy Moon, other defendants herein and those acting in concert with said Roy Moon, by reason of

the foregoing, are guilty of contempt of this Court, and that it is within the power of said defendants to obey said above orders of the Court.

Robert C. Ragan

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

TRANSCRIPT OF CONTEMPT PROCEEDINGS OF JUNE 1, 1960

before the Honorable John M. McCabe, Judge of the Court of Common Pleas, Lucas County, Ohio, 3:30 P. M., June 1, 1960.

The Court: In this action a petition was filed by the Toledo Marine Terminals, Incorporated, against some eight defendants, consisting of the International Longshoremen's Association, AFL-CIO Local 1317-A, and that upon the presenting of the petition and a motion for a temporary injunction and the statements of the attorney for the plaintiff, this Court granted the temporary injunction and set bond at $400.00. Now, I think it might be fitting at this time for counsel to make a brief statement of the history of this action, so that we may have a background—

Mr. Green: Before we begin proceedings, on behalf of the defendants herein I would like to say this, we are here especially to object to the jurisdiction of the Court and we are not appearing here in any way to submit ourselves to the jurisdiction of the Court. I say that beforehand, to preserve our—

[fol. 21] The Court: I suspect you expect a statement of that sort. It isn't that kind of a case, though.

Mr. Ragan: If the Court please, Local 1317-A, International Longshoremen's Association, was certified as the bargaining agent for the employes of the plaintiff company on November 6th of last year. Shortly thereafter a short-term contract was entered into between the International Longshoremen's Association and the plaintiff company, by the four defendants who are now present here in the Court, Roy Moon, Charles Walls, Milton J. Shoecraft and Cleo Syph. That contract extended for a period from the certification date of November 6th to December 15th. Also

participating in those negotiations was the International Vice-president of the I. L. A., Mr. Walter Weaver. The contract was intended and did serve the purpose of allowing the men to work out the remainder of the 1959 shipping season, and shortly after the first of the year negotiations were resumed to set up a contract for the future. During all the negotiations, and they were numerous, the four defendants I mentioned and Mr. Weaver participated in the negotiations; in the latter stages, in the last three weeks they have had the participation of the Federal Mediation man himself, Commissioner Harry Graves, of Toledo; the contract agreement had not been entered into by May 15, and picket lines were placed at the entrance of the company property at 26 Main Street in East Toledo; on May the 22nd, a week ago last night, in the office of the Federal Commissioner a contract agreement was arrived at. Now, throughout all the negotiations that I have outlined, the four defendants who are now here in Court, and Mr. Weaver reputedly represented to the plaintiff and myself, the representatives of the plaintiff, and to Commissioner [fol. 22] Graves, that they did have the authority and the ability to negotiate and sign a labor contract; a week ago last night that contract was arrived at, and immediately the picket lines were taken away from the entrance of the company property. The men returned to work the following morning, last Wednesday morning, and worked all Wednesday and Thursday, and on Thursday afternoon the contract, which is attached to the petition in this case, was signed by these four gentlemen who are present here, Roy Moon, Charles Walls, Milton Shoecraft and Cleo Syph, and that contract was signed last Thursday afternoon, and the following morning, Friday morning, pickets again were placed at the entrance of the plaintiff company's property. As the Court stated in his opening remarks, the petition was filed then on Friday afternoon, the same day, asking for a preliminary injunction, also asking for a temporary restraining order, which was granted and a bond filed. The four gentlemen who are now before the Court, after being in Chicago last Friday on union business, they could not be served until Saturday morning, but then they were served by the sheriffs office with a

copy of the petition and the Court's restraining order on Saturday morning; nevertheless the picketing continued throughout Saturday, Sunday and Monday, and yesterday morning we filed here an affidavit in the Court, asking for a citation of contempt; that picketing, none the less, Your Honor, has continued, and I was informed late this morning that there were five or six pickets at the entrance to the company's premises, and for this reason, with that history and background, we are prepared to introduce evidence, if the Court requires, to sustain the statements and allegations I have made, and we ask this Court to consider this contempt.

[fol. 23] Mr. Green: Your Honor, if it will hasten, or serve to hasten the sufficiency of this procedure, the defendants are willing to concede that there is picketing continuing at the premises designated in the petition; as we have said on several occasions in our discussions of this matter, the grounds upon which this petition was filed and the action set forth in the petition is one alleging a violation of the no-strike clause of an alleged collective bargaining contract between the Toledo Terminal Railroad and the Longshoremen's Association, Local 1317-A—

Mr. Ragan: Let me correct you on that, Toledo Marine Terminals, Inc., not the Terminal Railroad Company.

Mr. Green: Excuse me; in other words, in the first place, we want to say that this is an alleged contract, because we firmly believe and our position here is that the individuals who signed this contract had no authority to do so. However, I do not think that this is a matter that is presently before this Court, I don't think—

The Court: You are correct in that; that is not before the Court.

Mr. Green: I don't think any discussion of it will be fruitful except to show that this matter has been brought to the attention of the National Labor Relations Board; an unfair labor practice charge has been filed against the employers for failing to bargain faithfully; that matter has been docketed in Cleveland, No. D-C-A, 2168; as we have indicated before, in our discussions before, we have felt all along, and I will make this as brief as possible,

because I know the Court is very busy, we felt that when an order is made by a Court which lacks jurisdiction over the subject matter of the action, it can not be a valid order, and therefore no process for contempt can issue in the [fol. 24] face of its invalidity. We charge that this Court does not have jurisdiction by virtue of the fact that the National Labor Management Relations Act has been amended, and since 1947 reposes the entire jurisdiction over this matter in the National Labor Relations Board, that this clause of a collective contract which has been violated, if we take the statements of the employer as correct, which has been violated by picketing and this picketing ensued without the necessary notification being given—

The Court: That is the positive point, this Court—

Mr. Green: Well, let me—

The Court: This Court—

Mr. Green: I beg your pardon.

The Court: That is the positive point that is before the Court today; I want to know from these men when they received a Court order, whether they acted on their own notion of whether or not a Court order means anything or whether they had been told to disregard the order of the Court. That's the matter that is before the Court this afternoon, that I want to know; it is a simple matter on these things that you are now claiming that you wanted to assert them, to come into Court, they should have done so, but they didn't do that, some one told them that it was a smart thing to do, it was quite in keeping with the general principles of our country to disobey Court orders, disregard them. They are men of honor—they should be; they signed the contract; they know they signed the contract; instead of coming in and making an approach to the Court with respect to this injunction, some one told them, —they either acted on their own initiative or some one told them it was a smart thing to disregard the Court order. The Court might not have jurisdiction; I don't [fol. 25] know; perhaps some of these preliminary matters should have been cared for. They know that they negotiated for a couple of months, and these same men signed the contract.

I belong to a profession that has some regard for the oath of an individual or the honor of an individual; if you sign a contract and agree to do something, do it or explain why it can't be done. Lawyers take the word of other lawyers and will advise the Court to accept those words as golden. But here is a group of men who evidently have no regard for their own statements; they signed a contract and then they go out and immediately after that picket the place. Now, some one told them it was a bright, smart thing to do, to disregard the order of the Court, to pay no attention to that. That is the point we have here today. It might well be that after we get into the order there might be some things that should have been done in the negotiation of the contract, but this is no way to approach that problem at all, positively not. You obey orders of the Court. You are a judge, you expect your orders to be obeyed; you know that, and you as a lawyer could have advised them, "No, there is an order and you are going to have to abide by the order, but I will go into Court and I will file a motion and they will take that into consideration." No; they either told you that they were not going to abide by this order of the Court, or some one else very, very smart told them that that was the proper approach to make; when the Court made an order—disregard it.

This is a new experience to me, and I have been around a long time. This is the first time that anyone ever violated an order of the Court. Wouldn't it be just as proper [fol. 26] for them to simply say, "Throw it in the waste basket, disregard it.", and get away with it; there is the government; I am just a judge of the Court, and why any one individual thinks that they are superior to the government and those in authority in the government is certainly just beyond me. Now, we are headed in that direction unless Court orders are obeyed; there would be no object in having any Courts at all, we would just move on from one thing to another.

I want to find out from these men whether that was original with them, whether they thought the thing to do was to disregard the order of the Court. They got the order; they knew it was an injunction; some one told them

to disregard the order of the Court. Now, some one who knew what they were talking about would say, "No, you can't disregard the order of the Court; you should have some one go in and approach the Court and point out these things to the judge." He didn't do that. Now, if they are going to go on and disregard Court orders, I want to know it right now and I want to find out from these men whether they acted upon their own initiative or whether some one told them that was the thing to do. That is what I want to know. Now, I will give you until Friday at 10:00 o'clock to purge yourselves from contempt, and at that time I want you to come in and explain your action in this matter and why you would wholly and completely disregard the order of the Court—not what you think or what some lawyer thinks about it, that isn't material at all. When some one takes the law in their own hands and says, "Don't pay any attention to the Court," I want to know it now, whether they are going to proceed in this fashion or whether they are going to have the orders of the Court [fol. 27] honored in some fashion. A person of honor wouldn't sign a contract and then go out and violate it. If a man signs a contract, it certainly means something. That is all I am going to say; I give you until—unless some one else wants to say something.

Mr. Ragan: Yes, I have one thing I would like to say, Your Honor.

The Court: All right.

Mr. Ragan: I would like to say that the Toledo Marine Terminals man signed this contract at approximately 10:30 Tuesday night; when these men returned to work on Wednesday morning they started to work at the pay rates included in the contract, although the contract was not formally prepared at that time or signed until Thursday, but the company considered it was a valid contract existing from the moment in Commissioner Graves' office when the agreement was arrived at in the presence of Commissioner Graves and Mr. Weaver and these four gentlemen. Thank you, Your Honor.

The Court: I want to say, too, for the benefit of these people here, that in this time that you have to come in and purge yourselves of this contempt, I just want you to

remember that you are the ones who signed the contract, and you are the ones who violated the order of the Court, and I want you to be prepared at that time to tell the Court how you expect to be purged of contempt of Court. Now, that's all the question we have here, the only question before this Court.

Mr. Green: Your Honor, it was my understanding that they would be cited for contempt and we would be ready to appeal the ruling—would you just mind telling me, —if your Honor will—

[fol. 28] The Court: I want to know from them before that can be done, give them an opportunity to purge themselves.

Mr. Green: Your Honor—

The Court: I want them to explain to me why they violated the order of the Court.

Mr. Green: I can—

The Court: I want them to tell me whether they just did that or whether they were told by some one to do that; I want to know.

Mr. Green: I can advise the Court now that they were told by me.

The Court: Well, what—to violate the order of the Court? Did you tell them that?

Mr. Green: If the Court will just allow me to recall for both the attorneys for the Toledo Marine Terminals and for the Court and for myself some of the proceedings that have led up to this incident, I will. In the first place, an order was placed, an injunction was placed ex parte against this union.

The Court: That's right.

Mr. Green: Last Friday morning. This was after I had called you and asked you specifically to have a hearing.

The Court: I am not going into that at all.

Mr. Green: Let me explain, Your Honor, I think I can explain why, at least I can tell you in sequence why we have resulted in having to be here before you now in a contempt proceeding. Now, then, I came to you that same day and asked you if we would have a hearing, and you told me that there would be no hearing on this matter; you later suggested that if I could get Mr. Ragan to agree

to a hearing on the injunction which was already issued—

The Court: That's right.

[fol. 29] Mr. Green: —that you would have a hearing. Now, we couldn't get in touch with Mr. Ragan; it seemed very questionable that Mr. Ragan after once having had his day in Court and having received what he wanted, would come back in here for a hearing on this matter; that afternoon at four o'clock you refused to have a hearing because you felt it was too late. I asked you whether we could have it on Tuesday, and you said "No." You also told me that you did not feel that any other Court in this building could hear the matter even on the jurisdictional question; I don't mean on the contempt but only on the jurisdictional question. I was also told that on Tuesday you could not hear it and it was likely I wasn't going to get a hearing the rest of the week.

The Court: Then you went into the Federal Court.

Mr. Green: I will get to that.

The Court: And got thrown out over there.

Mr. Green: I had only two ways to go at it; let me say this, that this Court had no jurisdiction—

The Court: That is beside the point.

Mr. Green: And consequently a contempt on the basis of an invalid order cannot stand.

The Court: That is beside the point.

Mr. Green: Well, it is not beside the point.

The Court: You could at least obey the order of the Court and then come in and express whatever criticism you had and purge yourself.

Mr. Green: There were only two ways we could do this.

The Court: You could wait until we had a final hearing on the entire matter; that was the only way you could have done it; you could obey the order of the Court.

Mr. Green: No, we could not have done it that way. Then my clients would have had to give up the only vital [fol. 30] right they had to bargain. The only other way this matter could have come up is the way it did come up, that is, by a contempt action in this Court, because this is the only way this matter could have been heard. I will say to this Court that on Friday after the hearing of the Board of the International Longshoremen's Association in Chi-

cago, where they were negotiating this matter, I explained the entire situation to them and they were reluctant to give up their rights as far as their economic rights were concerned and it was apparent that this Court had made a Court order that was invalid on its face.

The Court: But that was before it was ever submitted into Court you did that.

Mr. Green: Oh, there is no question about that.

The Court: Why, sure, there is no question about that.

Mr. Green: This is the first time I have had a chance to submit it to the Court.

The Court: After the injunction was issued, I still say I want to know whether they acted on their own initiative in this matter or whether some one told them to disobey the order of the Court.

Mr. Green: I have said, I have already said to the Court that they obviously did not act on their own initiative.

The Court: Who did?

Mr. Green: Well, they were—

The Court: Who did?

Mr. Green: —instructed to do so by their superiors in the union in this case according to their own agreement, after they were advised by counsel that the order was not—

The Court: That is a contempt of Court.

Mr. Green: Your Honor—

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[fol. 31] The Court: They can either go back to work or they can come in here on Friday morning at 10:00 o'clock and purge themselves of contempt. I don't know how they are going to do that; then at that time we will talk about the penalty which is to be imposed; but the next step is—I don't know what it will be, but I don't want these gentlemen to be too much frightened about all this. It is apparent that they received bad advice, I say that to you, very bad advice; don't you ever take advice like that again, to ignore an order of the Court; whether it was right or whether it was wrong, you must respect the Court.

Mr. Green: Your Honor.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY

TRANSCRIPT OF CONTEMPT PROCEEDINGS OF JUNE 3, 1960

Thereupon at 12:04, Friday, June 3, 1960, the Court resumed its session, and thereupon the following transpired:

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Mr. Green: Just a minute; once again I would like to state to the Court and for the purpose of the record that we are not here to submit to the jurisdiction of the Court, but especially to object to that jurisdiction.

The Court: Well, we will take first things first. First, of course, will be the violation of the temporary injunction, then I think the affidavits and motion for order in contempt; that was the next step that was taken and that is still pending before the Court. However, there are other matters preliminary to this contempt proceedings that must be cleared up before the Court is prepared to proceed. This is a temporary order, and that has been violated; let's find out why it was violated. They are here today to purge themselves of contempt and I refer specifically to the gentlemen who were here the other day; you may proceed in any way you want to, or you see fit.

• • • • • • •

[fol. 32] The Court: We are here concerned with one thing, that is the action here for contempt for violating the temporary order of the Court, which was made and which has been violated, so we will take that up first.

• • • • • • •

The Court: All right. As I understand it, what we are now pursuing is the course of determining whether these gentlemen who have apparently been identified are here to purge themselves of contempt. That is the first thing. They have the burden of coming into Court and purging themselves of contempt. They are now in contempt for having violated an order of the Court, a temporary order of the Court. Now, then, you may proceed to determine whether these gentlemen can purge themselves of this contempt.

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Mr. Ragan: We have no further evidence, Your Honor. I would like to offer the pictures, Plaintiff's Exhibits 1, 2 and 3 in evidence.

The Court: Is there any objection?

Mr. Green: We have no objection.

The Court: Any objection?

Mr. Green: No objection.

The Court: They will be received in evidence. Well, now, I think we should hear from these gentlemen who are held in contempt. Whether they are represented or whether they are not represented, they may individually or through counsel purge themselves of their contempt. It is very apparent from what has been tendered this morning that they are in contempt of Court. The opportunity is always given, of course, to any one who has violated an order of the Court, to purge themselves if they choose [fol. 33] to do so; so I think they should be called upon; well, I don't know whether they are represented by any one or not.

Mr. Green: You mean these gentlemen?

The Court: Yes.

Mr. Green: They are represented.

The Court: By an attorney?

Mr. Green: They haven't taken my license away yet.

The Court: Well, what do you propose to do?

Mr. Green: If the Court please, assuming they are resting, I propose to rest also, Your Honor. We are really here in a criminal proceeding and my clients are not required to testify in such a general action, they are not required—

The Court: You also advised them to violate an order of the Court, too.

Mr. Green: I did.

The Court: You did. That may go on to the record, that the attorney appearing for these four defendants having violated the temporary injunction issued by this Court, and that he also advised them now not to take the stand to purge themselves of that contempt. Is that correct?

Mr. Green: I said, Your Honor, that I did not conceive that they could be called in a criminal proceedings to testify against themselves. I believe that this is a quasi-

criminal proceedings, and that the law is clear in this matter.

The Court: Do they wish to purge themselves from contempt of Court for violation of the Court order which has already been violated?

Mr. Green: On behalf of all four men, Your Honor, I would just make this statement, that they do not wish to proceed further in this matter.

[fol. 34] The Court: All right, now, I will—we will proceed from there. It is very apparent from what you have said here this morning that you are in contempt of Court. Now, I will give you until next Tuesday to purge yourself of contempt of Court, and you may select a lawyer of your own choosing; if you don't select a lawyer of your own choosing, I will appoint an attorney for you to represent you. I don't want you representing yourself. When you are violating the order of the Court and the orderly procedure of the Court, and you contemptuously brazenly tell the Court that you are violating the order of the Court, let's find out about that, and I don't want you representing yourself in a serious matter of this sort; I don't want that. You may select a lawyer of your own choosing, or I will appoint an attorney for you. I will give you until next Tuesday to purge yourself of contempt of Court. You stand from what you said here this morning in contempt of Court, very definitely. I guess that's all.

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Mr. Green: Your Honor, I have taken the only course open to me, but I don't feel that we are in contempt of Court. I don't want to discuss that at this time, I am not concerned with that at all.

The Court: You have taken the onus off them, you have done that.

Mr. Green: In other words, they are not in contempt of Court?

The Court: I did not say that. They are in contempt of Court, but you are not allowing them to purge themselves of contempt of Court; you are standing in front of them, saying they are not going to say anything in their own behalf; that is what you are saying.

[fol. 35] Mr. Green: Well, Your Honor, if that is the case, then I will allow them to say anything they want to in their own behalf. The only thing I want understood is—

The Court: I am telling you, your clients are in trouble. I don't care to sit here for an hour or two arguing with you.

Mr. Green: I am not arguing the case with you.

The Court: I have told you two or three times now what you can do, you have taken the full responsibility upon your own shoulders, so it rests until you purge yourself, and I feel that it is so serious, and you do not realize the seriousness of your own actions, and that is the reason I want to be fair with you, as fair as I know how to be, and I want you to select lawyers of your own choosing, and if you do not, I will select lawyers for you, men of ability, of integrity and honor, to represent you. That is what I will do. Well, I guess that is all; I can give you to Monday to select your own lawyers; if not, I will appoint an attorney for you. I don't want these men to get any strange notions about this kind of smart aleck attitude here, in defying an order of the Court, a temporary order of the Court; you are privileged to secure other lawyers if you wish; that is up to you. All right, that is all.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY

CHARGE IN CONTEMPT—R. C. 2705.02; 2705.03—
Filed June 6, 1960

Whereas, the undersigned judge of the Court of Common Pleas of Lucas County, Ohio, did on May 27, 1960, in the above captioned case, grant an order restraining and enjoining the defendants and other persons associated with and acting in concert with the defendants, and all others to whom knowledge of said order should come, from committing certain acts set forth in said petition; and,

[fol. 36] Whereas, one Merritt W. Green, II, legal counsel for the defendants, did with full knowledge of said restraining order, advise and counsel said defendants to disobey said order; and

Whereas, said defendants and others, acting on the advice and counsel of said Merritt W. Green, II, did disobey

said order by continuing picketing at or near the vicinity of the premises of the plaintiff at 26 Main Street, Toledo, Ohio, and

Whereas, said Green, after being notified in open Court by the undersigned, that he was in contempt of Court did and does continue to advise the said defendants to continue to disobey said order of the Court;

Said Green is hereby charged with being in contempt of Court, and a hearing thereon is set for June 7, at 10:30 o'clock, a. m., and the clerk is instructed to enter this charge on the journal of the Court.

John M. McCabe, Judge of the Court of Common Pleas, Lucas County, Ohio.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY

TRANSCRIPT OF PROCEEDINGS IN CONTEMPT—June 7, 1960

before the Honorable John M. McCabe, Judge of the Court of Common Pleas, June 7, 1960, at 10:30 a.m.

The Court: This is civil No. 18631, Toledo Marine Terminals, Incorporated, and so forth, against the International Longshoremen's Association and so forth, and others. The matter has been before the court for the past week. It came to this court on May twenty-seventh, in which this court at that time granted a temporary restraining order—a temporary injunction. The matter has gone on from day to day; each day has been a violation of the court's order, [fol. 37] and, so far as this court knows, they are still violating the order of the court. It was so necessary under the circumstances here to do something about it, so yesterday, June sixth, an order was filed in this court charging one Merritt W. Green, the second, in contempt. Briefly, this order says this:

"Whereas, the undersigned Judge of the Court of Common Pleas of Lucas County, Ohio, did on May 27, 1960, in the above captioned case, grant an order restraining and enjoining the defendants and other persons associated with

and acting in concert with the defendants and all others to whom knowledge of said order should come, from committing certain acts set forth in said petition; and,

"Whereas, said Merritt W. Green, II, legal counsel for the defendants, did with full knowledge of said restraining order, advise and counsel said defendants to disobey said order; and

"Whereas, said defendants and others, acting on the advice and counsel of said Merritt W. Green, II, did disobey said order by continuing picketing at or near the vicinity of the premises of the plaintiff at 26 Main Street, Toledo, Ohio, and

"Whereas, said Green, after being notified in open Court by the undersigned, that he was in contempt of Court did and does continue to advise the said defendants to continue to disobey said order of the Court;

"Said Green is hereby charged with being in contempt of Court, and a hearing thereon is set for June 7, at 10:30 o'clock A.M., and the clerk is instructed to enter this charge on the journal of the Court."

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[fol. 38] Mr. Green: The court reporter will have the record show that Merritt W. Green and Robert Burns are appearing here as counsel of record on behalf of Merritt W. Green, II, and we are here pursuant to the order issued to the respondent, Merritt W. Green, II on last Friday in court, to appear today with counsel and purge himself of contempt of court then found, and of course pursuant to the piece of paper that Your Honor caused to be filed yesterday, the record should show that our—we are taking the position at this time that has previously been taken by the respondent, that this court is and has been without jurisdiction of the subject matter.

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Mr. Green: I would like to have it understood now that if I take a position contrary to what the court sees is the issue, it is for the purpose of making up the record, and I believe we can agree now, can we not, that I have the right to make up a record.

The Court: You have a right to make up a record, but don't go over any matters that are not now before the court.

Mr. Green: Well, in order for us to set up a record for an appellate court it will be necessary for us to get in the record, over the objection of the court, over the rulings of the court, what we think is proper here, whether it is by way of an offer to prove or whether it is by putting it in with the court's ruling, so that a higher court can determine whether or not it should have been in here, because I think you are aware of the fact that if it isn't in the record, that it would be impossible for us to assert to the higher court that it should have been, and so forth because—

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[fol. 39] The Court: May I set you right; we are not touching upon the merits of this case; the only question is the issue of the restraining order, which was violated.

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Mr. Green: But the thing that you say that may not be an issue in this contempt proceeding at this moment, a higher court may think it is properly an issue and therefore I think I have a right to and must insist to the court that those things that we are presenting, even if they touch upon a matter which you think are not in issue, must be brought into the record for the Court of Appeals.

• • • • • • •

The Court: To set you right, there is only one issue before this court, and that is this contempt proceeding for violating the order of the court on May 27th of 1960, and a continuing violation each day from that time down to date, and each day constitutes a violation and a separate offense. Do you know that?

Mr. Green: Your Honor, I will agree that the issue before the court is as to whether or not the respondent is in contempt of court—

The Court: That's right.

Mr. Green: Now, in order to determine that for a higher court to determine that question because this court has already determined that he is in contempt—

The Court: That is right.

Mr. Green: It may be necessary for us to put into the record matters which you may not think are pertinent, but the one—I agree the only issue is whether he is in contempt of court—

The Court: Correct.

[fol. 40] Mr. Green: In order to have somebody determine that other than this court, we believe it necessary and we believe we have a right to introduce in evidence by way of mitigation or whatever you want to call it—

The Court: I don't call it anything. I am calling it contempt of court.

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Mr. Green: We again deny that the court had jurisdiction over the order which the court says has been violated by the respondent to date.

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Mr. Green: Now, may I ask of the court what is conceded to be the posture of this case today?

The Court: He is in contempt of court, I told you.

Mr. Green: Has the court already—let me ask it this way—are we—is my client here only for the purpose of being sentenced for the contempt that the court alleges that was found in him?

The Court: That is correct, Mr. Green.

Mr. Green: Well, then, as I understand it, the only thing is is up here for his defense—

The Court: That's right; he is in contempt of court. I told him that repeatedly.

Mr. Green: Well, that—

The Court: But he disregarded it.

Mr. Green: I want to know what is the procedure then, I want to know what procedure to follow.

The Court: The procedure is he is here in contempt of court. The court must punish him for contempt of court. I take it that you have consulted the courts on this matter earlier; I take it you have read the Supreme Court decisions on matters of contempt; I know your son didn't. I thought maybe you might.

[fol. 41] Mr. Green: The only thing I am trying to find out, what are we here for today?

The Court: I repeatedly told you.

Mr. Green: Are we for hearing or trial or what?

The Court: You are not here for any hearing or trial. You can not challenge the jurisdiction of this court; that is gone, but you are here only on one thing, Mr. Green, and it must be clear to you that the court issued an order on May twenty-seventh and that order was disobeyed.

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Mr. Green: So, prior to sentencing, in view of the fact that the court has already found him in contempt—

The Court: That's right—

Mr. Green: In mitigation, that is all I can say, I am going to ask the respondent to be sworn, put under oath, and I think he has that right.

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Mr. Green: And tell for the record under oath exactly what transpired from the very beginning of this case. I think he has that right, Your Honor, and I as counsel believe I have that right to speak on his behalf, or he can himself—and I will repeat exactly what he would testify to you under oath. I am asking that privilege so that the upper court will have before it all the facts pertaining to what—whether or not there was a request to dissolve this restraining order or whether the court's jurisdiction was not officially challenged and whether or not this court could not—did not refuse and has refused right to this day to give us a hearing.

The Court: Oh, please, Mr. Green, don't follow in the same channel.

[fol. 42] Mr. Green: I am not following in the same channel. I am asking the privilege of putting the respondent on the stand—

The Court: No. The courts have made the pronouncement on that.

Mr. Green: I would—

The Court: You are too late for that. You are too late.

Mr. Green: I understand that the court is refusing counsel for the respondent and the respondent the right to any mitigation, because you have already found him in contempt?

The Court: That's right.

Mr. Green: Without further hearing, without a trial. That you are refusing to let either counsel or the respondent to show or say for the record in mitigation to this court, everything that transpired—

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Mr. Green: I would like to ask the court to answer that question; it is important.

The Court: I have told you that he is in contempt of court, repeatedly, in contempt of court, because he has stood before this court on two or three occasions and told this court that he was violating it and his clients were violating the order of the court.

• • • • • • •

Mr. Green: You mean to tell me that you are forbidding us to put into the record everything that transpired so that a higher court could determine the fact, whether a lawyer is guilty of contempt of court, whether he acted in a manner that was contemptuous?

The Court: Mr. Green, there is nothing before this court on the theory that you now advance.

Mr. Green: But it has to be before the court, Your Honor.

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[fol. 43] Mr. Green: This is the record I want to read into the record, what the respondent would testify to if permitted to testify under oath, * * * as already indicated.

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Mr. Green: Yes; that is why we want to put it in the record because you see it would be hard to perfect an appeal—"At about 9:30 A.M. on the 27th day of May, 1960, I received a telephone call from Mr. Ed Doherty, Port Agent for the Seafarers International Union in Toledo who inquired as to whether I would be available to represent the I.L.A. in their labor dispute with The Toledo Marine Terminal."

The Court: This is the attorney, I understand, talking in their office, is that right?

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Mr. Green: I am putting in the record what he would testify—

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Mr. Green: This is being put in the record by way of an offer to prove because the court has refused to let us put it in otherwise.

The Court: I don't want the record cluttered up with a lot of irrelevant things which has no value to anybody, completely and wholly outside the point in question.

Mr. Green: Well, this is being offered in the nature of making up the record in view of the court's ruling that we have no right to put it in and we certainly have a right to preserve our record.

The Court: I didn't say you didn't have any right. You say anything you want to say except don't get in contempt of court again.

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[fol. 44] Mr. Green: Continuing,—

"in their labor dispute with The Toledo Marine Terminal. After assuring him that I would, I went directly to the Seafarers Hall and after consulting with members of the I.L.A. who were present, and after determining that the officers of such union were in negotiations in Chicago I immediately telephoned that City to confirm my representative capacity.

"I spoke to Mr. Pat Sullivan, an official of the Great Lakes District of I.L.A. who explained in detail the position of the union with respect to the alleged contract and at that time was advised that Mr. Robert Ragan represented the Toledo Marine Terminals.

"I immediately sent word to the men in charge of the picket lines instructing them to reduce the number of pickets to as few as possible and to send home any men who had been drinking. While still at the Union Hall and at approximately 11:00 A.M., I was able to contact Mr. Ragan and advised him that I represented the union which fact he acknowledged but offered no further information, respecting his intentions.

"I then returned to my office where I immediately contacted the Clerk of the Federal District Court, Clerk of the

Common Pleas Court and the Assignment Commissioner of the Common Pleas Court to advise them that I represented the union and that should a suit be filed requesting an injunction that I would be available for an immediate hearing and requested them to contact me immediately or to at least advise the Judge to whom the case was assigned of such fact.

"In the meantime I discussed the jurisdictional question with my associate in the practice of law and we both agreed [fol. 45] that under the circumstances the State Court did not have jurisdiction and reinforced our opinion after examining the BNA Labor Expediter.

"While we were discussing this matter I received a telephone call from Mr. Irving Friedman in Chicago, the general counsel of the I.L.A. for the Great Lakes District. We discussed generally the contract and the possibility of an injunction suit being filed and he agreed with our opinion that the State Court lacked jurisdiction over the matter.

After checking several of the leading cases in the L.R.R.M. Reports, particularly the recent decision of the United States Supreme Court in San Diego Building Trades Union vs. Garmon, I was convinced that the NLRB was the only tribunal which had authority to resolve the matter. I therefore immediately prepared an unfair labor charge against the employes [sic] based upon a refusal to negotiate in view of the invalidity of the contract and forwarded it to the Cleveland office of the NRLB.

Shortly thereafter, at about 12:00 noon I received a call from the Court House to advise that Mr. Ragan had informed the Clerk's office of the Common Pleas Court that a suit of some nature would be filed immediately after lunch. After requesting that I be advised when such event occurred I continued to research the jurisdictional question and prepared a brief outline of our legal position.

At about 1:15 P. M., I received a call from the Court House to advise that an injunction suit had been filed against the I.L.A. and that the matter had been assigned to Judge McCabe. I immediately contacted Judge McCabe by phone, told him that Mr. Ragan was about to present him with an injunctive petition, that I represented the union and that I would be available for a hearing on the restrain-

[fol. 46] ing order upon a moment's notice. He replied "alright" or words of similar import. I thereupon reviewed my outline and waited his call.

"Between fifteen minutes to a half hour later I received a call from the court house to advise me that the injunction had been granted. I replied that this could not be possible and that certainly Judge McCabe would not take such action without a hearing particularly in view of my earlier call. The party calling me said that he would substantiate his information and upon doing so called me back to confirm the issuance of the order and to inform me that the Sheriff's office was preparing to serve the summons.

"I immediately started over to the court house, but after a second thought went to Smith's Cafeteria to see what my associate would suggest in view of the circumstances. Realizing that such an order could not be appealed we both went directly to the Court House to discuss the matter with Judge McCabe and to request an immediate hearing.

"I found Judge McCabe in Judge Macelwane's chambers and approached him as he was leaving to return to his own chambers. After some brief preliminary remarks he asked me what I wanted and I told him I would like to have a hearing on the issuance of the restraining order. He said definitely and flatly that I was not going to have a hearing, that Mr. Ragan had told him that everyone was happy with the contract and that some hoodlums from Detroit had come to Toledo and forced them to go back on strike and he wasn't going to let these outsiders come down here and push us around. I protested that these were not the facts and that the position of the union was that the persons who signed the agreement had no authority to do so and further suggested that the court had no jurisdiction. He [fol. 47] again said that I was not going to get a hearing on the matter and that he would make a little jurisdiction. I told him that I was entitled to an immediate hearing on the matter particularly in view of the question of jurisdiction and he replied that he did not have the time and that I would have to wait my turn. After some urging however he did say that if I could get Mr. Ragan to agree to a hearing on the issuance of the restraining order he would hear it that afternoon. Being somewhat puzzled at this sugges-

tion, and frustrated, I left the Judge's chambers in search of my associate who was attempting to locate this file. During my entire conversation with Judge McCabe, with the exception of our walk from Judge Macelwane's chambers, Judge McCabe occupied himself by reading a brief.

"I found my associate in the Clerk's office where he had found the petition and, upon examining it carefully, we determined to our complete satisfaction that the court did not have jurisdiction. Moreover it was our belief that the prayer of the petition did not pray for a restraining order but the practical effect was that of the issuance of a temporary injunction.

"We thereupon retired to Judge Straub's chambers and examined the statutes relevant to the issuance of injunctions and after assuring ourselves that a hearing was necessary before a temporary injunction could issue we both approached Judge McCabe and told him that we thought the petition erroneously prayed for a temporary injunction instead of a restraining order and that in that event we were certainly entitled to an immediate hearing. He replied that he did not read the petition very carefully and could not really say what it was all about but felt that he could take Mr. Ragan's word for the contents and again [fol. 48] said that he did not have time to set the matter down for hearing, neither now or in the near future. I asked him whether his offer was still open and if I contacted Mr. Ragan would he hear the matter immediately. He replied that he would and I called Mr. Ragan's office from Judge McCabe's office only to find that he was not in at the moment and could not be reached.

"Again a discussion began regarding the necessity of a hearing with my associate making most of the appeal. During the conversation Judge McCabe again said if we could get in touch with Mr. Ragan immediately he would not set it down for an early hearing and he would not give us any idea as to when he would do so. He again said that he was very busy and that other matters needed his attention, that he could not hear two matters at once and that the matter would simply have to wait until it came up for final hearing. At this point I suggested to the court that if he was too busy would he consent to another Judge hearing

the matter, whereupon he absolutely refused saying that the other Judges are busier than he is with two of them out of town fishing.

"During this same conversation he again said that the contract was signed by these men, that he believed that when men sign contracts it should be honored and that he was not going to have these hoodlums from Detroit coming down here and running our city. He pointed out that he was presently dealing with several other hoodlums from Detroit on criminal matters."

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"As our conversation neared its end, my associate told him that regardless of the private opinions of the court, respecting the validity of the contract that the court had [fol. 49] no jurisdiction over this matter and that he was forcing us to advice [sic] our clients,"— • • • "of their rights not to obey the order. Judge McCabe replied that in such an event that they would be cited for contempt."

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"After a great deal of urging Judge McCabe agreed to have his bailiff contact Mr. Ragan and request that he appear for a hearing to raise the jurisdictional matters involved. Inasmuch as Mr. Ragan was not in his office he assured us that he would contact me as soon as such a hearing could be arranged thereupon my associate and I returned to the office.

"By 4:00 P.M. not having heard from the court I called Judge McCabe's office to see if they had been able to contact Mr. Ragan. Judge McCabe said that they had contacted Mr. Ragan but that he was about to leave and did not intend to hold night court. I requested that he hear the matter on Saturday and he stated that he would not be in over the week end. I requested a hearing on Tuesday and he replied that he had a trial that day and further said that it looked like the rest of his week was filled.

"I then returned to my office and consulted with my associate regarding the day's events and we both concluded that Judge McCabe had no intention whatsoever of granting us a hearing unless he was absolutely forced to, and that even if we were allowed to argue the matter before

him it seemed doubtful that he would be inclined to recognize our jurisdictional argument.

"Operating on this conviction we consulted the Ohio authorities to affirm the position that an order made by a court in a matter over which it had no jurisdiction is absolutely void and therefore contempt proceedings could not issue thereon.

[fol. 50] "I thereupon called Mr. Friedman in Chicago and advised him as to the status of the matter. I explained to him that though it was possible to file a motion to vacate or a demurrer to the petition that it was apparent from the action of the court that such a motion would not be set down for hearing in the near future and that even if it were, an adverse ruling, which seemed most likely in view of the court's attitude, would not be a final order and could not be appealed. I then told him that if we were correct on the law that the order of the court was wholly invalid then the only alternative would be to defy the order of the court in the hopes that Mr. Ragan would file contempt proceedings which would undoubtedly be heard immediately and from which we could instantly appeal to the Court of Appeals to determine the jurisdiction of the court.

"Mr. Friedman said that he would have to take the matter up with the officials of the union and that he would contact me later in the evening. I immediately drove to the picket line to pick up a copy of the petition." • • •

By the way, it was not served on counsel, even though Mr. Ragan knew that respondent represented them.

"and while there attempted as best I could to explain the afternoon's proceedings. I further told them that I would contact them later after I heard from the officials of the union.

"At about 8:00 P.M. Friday evening I received a call from Mr. Friedman who advised me that the union officials had considered the matter in detail and had concluded that on the basis of my report to them that their only possible course was to continue the picketing. I thereupon called the union hall and told them of the decision of the officials and asked them to communicate this information to the pickets.

[fol. 51] "On Saturday the 28th day of May I was advised that Mr. Ragan attempted to file an affidavit in contempt but for reasons unknown to me, Judge Macelwane, who was on duty, refused to issue such proceedings and set the contempt matter for hearing at 9:00 A.M. on Tuesday, May 31st.

"Over the weekend I continued to study the jurisdictional question as well as related matters and prepared a motion to vacate the restraining order, a petition for removal and a petition for writ of habeas corpus. In addition I consulted at length with my associate and Mr. Friedman respecting all of these matters.

"At approximately 8:30 Tuesday, May 31st, I perfected the removal proceedings and appeared in Judge McCabe's court at the assigned hour.

"At 12:00 noon, Judge McCabe advised us in chambers that in as much as removal proceedings had been perfected he felt that we should take up the matter with the Federal District Court. Mr. Ragan and I left the Judges chambers and Mr. Ragan told me he intended to contact Judge Kloeb immediately after lunch to arrange for a conference regarding the removal proceedings.

"Around 2:00 P.M. on the 31st day of May, Mr. Ragan and I met in Judge Kloeb's chambers. Without deciding the question of the right of removal, Judge Kloeb stated that he felt I was attempting to remove the cause in an effort to avoid the order of the court and that he did not want to be a party to such an avoidance when there was an adequate right of appeal within the state court jurisdiction. Moreover he felt that the five judges of the state court would have more time to handle this matter than the single [fol. 52] judge of the District Court and finally indicated that he was about to leave on his vacation and did not want to become involved in a complicated and serious legal matter unless he absolutely had to."

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"In the course of the discussion however he did indicate that he would not have issued an injunction ex parte under any circumstances and further that he did not feel that his court had jurisdiction over the matter but that the juris-

diction was in the N.L.R.B. pursuant to the Taft-Hartley Act.

"Sensing the disposition of the court toward this matter, I agreed to consent to a remand to the State Court and Mr. Ragan and I went immediately to Judge McCabe's chambers to discuss the entire matter."

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"Mr. Ragan opened the discussion and he and the Judge talked for some time during which conversation the court concluded that it did not intend to reform the contract. Feeling it necessary to advise the court of my position on the jurisdictional matter involved I interrupted the conversation and asked if I could say a few words, a request Judge McCabe graciously granted. I attempted to explain the matter to him pointing out that I was there only to object to the jurisdiction of the court and that my prime interest was to have the matter heard so that we could either appeal it or get it before the N.L.R.B. or get it where it belonged. Judge McCabe suggested that I was obsessed with this point and Mr. Ragan suggested that I file a motion to vacate the restraining order."

The Court: That's right.

[fol. 53] Mr. Green: "I thereupon told the Court that I had a motion to vacate prepared and would gladly file it immediately if I could obtain an early hearing. The court flatly refused saying that he would not hear the motion until the restraining order was obeyed. I then asked Judge McCabe that if the restraining order was obeyed would it be possible to obtain a hearing within the week and he replied that it would not.

"Mr. Ragan then suggested that as an alternative that I agree to submit to the court the four signators of the agreement to be dealt with on contempt. After some discussion I agreed to do so and stated to both Judge McCabe and Mr. Ragan that I would gladly stipulate all matters necessary to establish the contempt so that I could immediately appeal the decision or file habeas corpus proceedings.

"The entire atmosphere of the meeting was light and agreeable and I was convinced that both the Judge and Mr. Ragan were aware that I had consented to bring these

men before the court and stipulate the essential matters for the express purpose of testing the validity of the court's order and its jurisdiction over the subject matter. So far as I was concerned the matter was clear cut and the hearing the following day was to be short and to the point. To that end I prepared the necessary habeas corpus proceedings.

"The contempt proceedings of the first of June are a matter of court record. The following day I researched and prepared a petition for a writ of prohibition and presented it to the Court of Appeals at about 4:15, Thursday afternoon. I was advised by the court that my petition was filed [fol. 54] too late and they did not feel that they could issue an ex parte alternative writ. In addition however they offered the opinion that the writ would not lie even if it were filed because I had an adequate remedy at law to test the jurisdiction of the court upon the conviction in the contempt proceedings by way of habeas corpus or appeal. They also suggested that their recent decision in the Foodtown case resolved this matter."

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That concludes that part of what we—only that part of what we intend to offer by way of mitigation or purging, whichever the court wants to call it. It should be and it is important that the court know that the contract that was the basis of this lawsuit, on which the court based the failure of these fellows to live up to their agreement when he issued this injunction, that contract on its face shows two things, one, it is not a completed contract—well, that is one of the things that is before the court, number two, this matter, as the record shows, the petition shows, arises out of transactions and activity in interstate commerce. Mr. Ragan has stipulated or said into the record that this union has been certified by the N.L.R.B., so there can be no question about the interstate commerce acts or proceedings.

• • • • • • •

Now, the thing that you filed here yesterday—I don't know what you call it, I have forgotten the name of it—I don't mean any disrespect, you said charge in contempt?

The Court: "Charge in Contempt."

Mr. Green: It was under 2705.02, .03?

The Court: 2705.02, that's right.

[fol. 55] Mr. Green: Of the General Code. 2705.02 says: "A person guilty of any of the following acts may be punished as for contempt: (a)" —this is the only one of the things I think that should be applicable here,— "disobedience or resistance to a lawful writ, process, order, rule, judgment or conduct of a court or an officer."

So whether we want to get into the original question of jurisdiction, or not, a contempt proceeding can not lie under this provision of the Code, unless it has the first essential of being a lawful order.

• • • • • • •

Mr. Green: Now, necessarily and as a part of this whole proceeding the question here is whether or not the Court in the first instance was erroneously led into believing when it issued this order in chambers, that it in fact did have jurisdiction.

The record shows and I don't think there is any denial that this is a matter exclusively in interstate commerce; that it is within the jurisdiction of the N.L.R.A.; the union a certified agent, according to the plaintiff; there is now presently before the Board an unfair labor practice arising out of an alleged breach of this so called contract.

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Mr. Green: (continuing)—then I don't know what it coming to. I think we have that right and that's what we have done. All the circumstances arising before and leading up to the advice of this lawyer to his clients, if that is excluded, then I presume as the Court said, it has decided, then the only thing here today is the question of punishment.

The Court: That's right. At last, you have arrived at the conclusion. That's all that's before the Court.

• • • • • • •

[fol. 56] Mr. Green: This thing apparently in the last few minutes has come dangerously close to degenerating into an emotional thing and I would like to suggest this to the

Court, that before sentence is imposed that the Court will go back and read what is in the record and the new record—

The Court: I am not going to read all that.

Mr. Green: I was just going to make the suggestion.

The Court: You may make your suggestion.

The Court has previously held that Merritt W. Green II is in contempt of court, therefore he is ordered committed to the Lucas County jail for a period of ten days and to pay a fine of $500.00 and stand committed until the fine is paid.

That's all there is to it.

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(Hearing adjourned at 12:30 P.M.)

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY

TRANSCRIPT OF DOCKET ENTRIES

1960, June 7. Petition for writ of habeas corpus, filed.

1960, June 7. Writ of habeas corpus issued and delivered to sheriff. Ordered to appear and show cause at ten o'clock a.m. on Thursday, June 9th, 1960. Further that pending the hearing and determination of said cause said Merritt W. Green II, shall be released from custody upon giving bond in the sum of five hundred dollars with surety to the satisfaction of the clerk of this court.

1960, June 7. Recognizance of the accused, filed.

1960, June 8. Writ of habeas corpus returned, filed endorsed as follows, viz: Received a writ of which the fore-[fol. 57] going is a certified copy June 7th, 1960, at 3:10 o'clock p. m. and pursuant to its command on the seventh day of June, 1960 at 11:00 o'clock a.m., I made service thereof upon the said William Hirsch, sheriff of Lucas County, Ohio, by delivering to him personally, said original writ of habeas corpus. s/Paul Hohly, M.D., Coroner.

1960, June 8. Writ of habeas corpus returned from the sheriff, filed endorsed as follows, viz: To Honorable Judges of the Court of Appeals, Lucas County, Ohio. Received this writ seventh day of June, 1960, at .... o'clock ..... M. The said Merritt W. Green, II, was then in my custody

under and by virtue of a warrant of arrest issued by the Court of Common Pleas of Lucas County, Ohio, a true, correct and complete copy of which said warrant is as follows:

To the Sheriff of said County:

Whereas, at the April Term of said Court of Common Pleas, begun and held at Toledo, Ohio in said county, on the fourth day of April, 1960, the said Merritt Green, II, having been charged with contempt of court. It is therefore the sentence of the Court that he be imprisoned in the county jail for the term of (10) days and that he pay a fine of ($500.00) dollars and that said Merritt Green, II, is therefore ordered into the custody of the sheriff of this county, to remain confined in said county jail until the term of (10) days confinement expires and until said fine are paid, or secured to be paid, or until otherwise legally discharged. And he shall secure credit upon such fine at the rate of three dollars per day for each day's imprisonment. You are therefore, Hereby Commanded to proceed [fol. 58] to carry out and enforce said judgment and sentence of the Court, according to law.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Toledo, Ohio, this seventh day of June, 1960. (Signed) Francis A. Pietrykowski, Clerk.

In witness whereof, I have hereunto set my hand this eighth day of June A. D., 1960. s/William Hirsch, Sheriff of Lucas County, Ohio.

1960, June 9. Motion for leave for The Toledo Bar Association to intervene as amicus curiae, filed.

1960, June 17. Motion for leave for The Toledo Bar Association to intervene as amicus curiae, granted.

1960, June 27. Petitioner, the respondent and amicus curiae have leave to file their respective briefs by June 30, 1960 and the petitioner and respondent have leave to file reply briefs, if they so desire, by July 7, 1960.

1960, June 29. Brief of petitioner, filed in triplicate.

1960, June 29. Memorandum Re bail, filed in triplicate.

1960, June 30. Brief of amicus curiae, filed in triplicate.

1960, June 30. Proof of service, filed.

1960, July 7. Petitioner granted leave to file his brief or briefs in reply to briefs now filed in this cause, by July 14, 1960.

1960, July 14. Reply brief of petitioner, filed in triplicate.

1960, Nov. 1. Minutes, filed. Release upon petition for writ of habeas corpus denied, for reasons set forth in the per curiam opinion, costs assessed against petitioner. Exceptions saved.

[fol. 59] 1960, Nov. 1. Opinion, filed.

1960, Nov. 12. Court finds that Merritt W. Green, II, lawfully imprisoned by the sheriff of Lucas County, Ohio. Ordered that Merritt W. Green, II, be remanded to the custody of the said sheriff of Lucas County, Ohio, pursuant to the commitment as set forth in the return herein filed, and that he pay the costs of this proceeding. Exceptions saved.

1960, Nov. 18. Notice of appeal to the Supreme Court of Ohio, filed by petitioner. Said appeal is on questions of law.

1960, Nov. 21. Praecipe for transcript to the Supreme Court of Ohio, filed.

1960, Nov. 23. Stipulation, filed.

1960, Nov. 23. Petitioner's bill of exceptions, filed.

[fol. 60]

IN COURT OF APPEALS OF LUCAS COUNTY, OHIO

OPINION OF THE COURT OF APPEALS

Per Curiam:

This is an original action in habeas corpus filed in this Court on June 7th, 1960. The issuance of the writ of habeas corpus is the outgrowth of an action for an injunction had in a case then pending in the Court of Common Pleas of Lucas County, wherein the Toledo Marine Terminals, Inc., was plaintiff, and various members of the International Longshoremen's Association, a labor organization, were defendants. The record discloses the following pertinent facts in the above styled action: an injunction was sought to enjoin the defendants, among other things, from

picketing in any manner the premises of the plaintiff as set forth in the petition. Upon the filing of this petition a temporary restraining order was allowed by the Court as prayed for and bond was set and furnished. In defiance of this restraining order defendants continued with the picketing of plaintiff's premises. As a result of such violation of the restraining order four members of the Longshoremen's Association were cited for contempt of court. A hearing on said contempt charges was held before the Honorable John M. McCabe, Judge of the Court of Common Pleas on June 1st and June 3rd, 1960. The petitioner seeking release by habeas corpus is an attorney at law and appeared as the attorney for the Longshoremen Association in the action out of which the present action grows; that he also appeared as attorney for the four pickets charged with contempt of court at the hearing on June 1st and June 3rd. At this hearing the petitioner in this habeas corpus action was asked—

> [fol. 61] "The Court: I want them to explain to me why they violated the order of this Court.
>
> Mr. Green: I can—.
>
> The Court: I want them to tell me whether they just did that or whether they were told by someone to do that, I want to know.
>
> Mr. Green: I can advice [sic] the Court now that they were told by me."

Upon his admission that he had advised members of the union to continue the picketing of plaintiff's premises in violation of the Court's restraining order the Court found Mr. Green was in contempt of court and he was given until the following Tuesday, June 7th, to purge himself of contempt.

On June 6th the Court filed a written charge against the respondent charging him with contempt of court and set the hearing on said charge for June 7th at 10:30 a. m. At this hearing the respondent appeared, also his counsel, Mr. Merritt W. Green and Mr. Robert Burns, who stated that they were in court pursuant to the order issued to the respondent to appear with counsel to purge himself

of contempt of court. Counsel thereupon stated to the court that they were taking the position that the court was without jurisdiction of the subject matter, in the action in which the restraining order was issued. During the hearing on June 7th counsel admitted that the respondent advised the members of the union to violate the restraining order issued by the court. See Record, Page 43.

Three legal questions are presented—

First: Did the Court have jurisdiction to issue the restraining order which is the basis of this contempt action?

[fol. 62] Second: Did the action of the respondent in advising the violation of the restraining order constitute a contempt of court?

Third: In the hearing upon the written charge against the respondent for contempt of court was due process of law accorded the respondent?

It is the contention of the petitioner that the Common Pleas Court did not have jurisdiction of the subject matter in the original action to issue the restraining order or restrain the picketing of the plaintiff's property, that the subject matter involved was within the exclusive jurisdiction of the National Labor Relations Board. The right of the state Court in the original action to retain jurisdiction and on final hearing to issue an injunction is not raised by this proceeding, and is not decided by the Court. The question involved in this habeas corpus action is the jurisdiction of the state Court to issue the temporary restraining order to preserve existing conditions until such time as the Court could pass upon the question of its jurisdiction. We believe that this question is fully and definitely settled by the decisions of the United States Supreme Court.

In the case of United States of America v. John F. Shipp, et al., 203 U. S. 563, 27 Supreme Court Reporter, it is stated on page 166,—

> "But even if the circuit court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it

alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument, and to take the time required for such consideration as it might need. Until its judgment declining jurisdiction should [fol. 63] be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time".

We find in the first headnote of this case the rule stated as follows:

"1. Lack of jurisdiction in the Federal circuit court of a petition for habeas corpus, or in the Supreme Court of the appeal from the order denying the writ, does not enable persons to disregard, without liability to process for contempt, the order of the Supreme Court, that 'all proceedings against the appellant be stayed, and the custody of said appellant be retained pending this appeal,' since that court necessarily has jurisdiction to decide whether the case is properly before it".

The rule as laid down in United States v. Shipp, supra, is followed in Carter v. United States, 135th Federal 2d, 858. In that case the violation of the temporary restraining order was held punishable as criminal contempt pending a decision on the doubtful question of its jurisdiction. The district court was held to have jurisdiction to maintain a status quo by issuing a temporary restraining order and punish a violation of such order as contempt.

The law as stated in the case of United States v. Shipp, supra, was followed by the Supreme Court in a case of United States vs. United Mine Workers of America, 330 U. S., 258. The Court held in the later case that where the district court issued a restraining order to preserve existing conditions pending a decision of its authority to grant injunctive relief in a government suit the defendant's disobedience of the restraining order was punishable as a criminal contempt.

[fol. 64] It is the holding of this Court that the Court of Common Pleas had jurisdiction to issue the temporary restraining order restraining picketing of plaintiff's premises.

The second question confronting the Court is whether the act of the petitioner constitutes a criminal contempt. It is recognized that the question here involved is of the utmost importance to both the Courts and the members of the Bar. In re Watts, 190 U. S. 1, 23 Supreme Court Reporter at page 725, Chief Justice Fuller states the rule "in the ordinary case of advice to clients, if an attorney acts in good faith and in the honest belief that his advice is well founded and in the just interests of his client, he cannot be held liable for error in judgment. The preservation of the independence of the Bar is too vital to the due administration of justice to allow of the application of any other general rule".

It will not be questioned that the petitioner was fully within his rights to advise his clients that in his opinion the Common Pleas Court did not have jurisdiction to issue the restraining order and to point out to his clients the legal remedies open to them to raise the question of jurisdiction. When the petitioner went beyond advising his clients as to their legal rights and that the order of the Common Pleas Court in his opinion was invalid and advised them to violate the Court's order, his actions in so advising them ceased to be privileged and he acted at his peril. The act of advising the violation of the Court's order in and of itself constitutes contempt regardless of the good faith or bad faith of the petitioner. The record reveals that the petitioner admitted in open Court that he advised his clients to violate the Court's restraining order. The gist of petitioner's offense was not in advising his clients that [fol. 65] the Court was without jurisdiction to issue the restraining order and therefore the order was invalid, but when he proceeds further and without filing any motion or pleading of any kind to test the jurisdiction of the Court advising his clients to ignore the Court's order. This is not a case where the attorney gives wrong advice on a legal proposition. Whether his opinion regarding the Court's jurisdiction was correct or incorrect his duty was to advise

his clients to obey the order and to follow his legal remedies to test such jurisdiction.

In the instant case the conduct of the petitioner was clearly an obstruction to the due administration of justice and therefore the question of his good faith in advising a violation of the restraining order has no application.

The final question to be passed upon by the Court, is whether or not at the hearing on the written charges filed against the petitioner he was denied due process of law. Before discussing the question involved let it be said that this Court does not approve of the manner in which the hearing in the trial court was had. The wrangling appearing in the record which took place between counsel for the petitioner and the court should not be found in an orderly judicial proceeding. However, the duty of this Court is to sift the evidence appearing in the record to see if due process had been afforded the petitioner and to determine whether any rights of the petitioner have been violated to his prejudice. In both the decisions of the United States Supreme Court and the Supreme Court of Ohio it is stated that due process of law involves only the essential rights of notice, hearing or the opportunity to be heard before a competent tribunal. McKane vs. Durstoon, 153 U. S., 684, [fol. 66] 14 Supreme Court Reporter 913, State vs. Edwards, 157 O. S., 175, Luff vs. State, 117 O. S., 102.

R. C. Sec. 2705.01 provides that a Court or Judge at chambers may summarily punish a person guilty of misconduct in the presence of or so near the Court or Judge as to obstruct the administration of justice.

It would appear that when the petitioner, an officer of the Court, stated in open Court on June 1st and June 3rd that he advised the pickets to continue their picketing and disobey the restraining order his acts constituted contempt, "in the presence of or so near the Court as to obstruct the administration of justice". Under such facts it was not necessary to file written charges. However, whether necessary or not, written charges were filed under R. C. Sec. 2705.03 for contempt of court as set forth in subsection A of R. C. Sec. 2705.02 and a hearing was had on said written charges on June 7th.

The trial court before whom the contempt proceedings was had was also the trial Judge who issued the temporary restraining order which was violated and also the trial court conducting the hearing on June 1st and June 3rd of the pickets charged with contempt. This being true, in the hearing held on June 7th the Judge could take judicial notice of all that transpired in the preceding hearings which were the outgrowth of the injunction action then pending before him. In the hearing on June 7th the court could take judicial notice of the fact that the temporary restraining order restraining picketing was issued; that the restraining order so issued was violated by the continuing of picketing after the restraining order was issued and after those violating the order had notice of the order; that the petitioner as attorney for the respondent at the [fol. 67] hearing on June 1st and June 3rd admitted advising them to violate the restraining order.

While there appears in the record contradictory statements of the purpose of the hearing had on June 7th and at times it would appear that the court and counsel were apparently confused and differed as to the matters being discussed, this Court is of the opinion that there appears in the record admissions of guilt of the petitioner in advising his clients to violate the restraining order. This admission of guilt was made by the petitioner at the hearing on June 1st and June 3rd and admission of his guilt in advising the violating of the restraining order was made by his counsel at the hearing on June 7th. The record does not show the petitioner was denied the opportunity to be sworn and to testify; that his counsel read into the record a complete and detailed statement of what the petitioner would testify to if sworn and testified as a witness. Various parts of this statement made by petitioner's counsel were discussed during the presentation by both petitioner's counsel and the court. The Court find that the petitioner was not denied due process of law at the hearing on June 7th and that there was evidence produced at the hearing of June 1st and June 3rd and also June 7th which supported the finding of the trial court that the petitioner was guilty of contempt of court. Consideration of the evidence produced prior to the filing of written charges was within the

sound discretion of the trial court and was not prejudicial to the petitioner. See North American vs. United Automobile, etc., 69 O. L. A. 242, 124 N. E. (2nd) 822.

The Court therefore find that the petitioner has failed in his proof that he is being unlawfully restrained of his liberty. Judgment accordingly.

Middleton, J. and Guernsey, J. concur.

[fol. 68] YOUNGER, P.J. dissents.

It is admitted by all parties here that the plaintiff in the case in which this contempt proceeding arises, The Toledo Marine Terminal, Inc., is engaged in interstate commerce and that the picketing by the defendant members of the International Longshoremen's Association was entirely peaceful and nonviolent.

The Supreme Court of Ohio in Grimes & Hauer vs. Pollock, 163 O. S. 372, has held:—

> "Because of the decision of the Supreme Court of the United States in the case of Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776, 346 U. S., 485, where a labor union is in dispute with an employer engaged in interstate commerce over the unionization of the employer's nonunion employees, and the union pickets the business locations of such employer in an orderly and peaceful manner, a state court is without jurisdiction to enjoin the picketing; a controversy of this kind comes within the provisions of the Labor Management Relations Act (Section 151 et seq., Title 29, U. S. Code), as it relates to unfair labor practices; and the employer must, initially at least, pursue the remedy of presenting his grievance to the National Labor Relations Board".

Also in Richman Brothers Co. vs. Amalgamated Clothing Workers of America, et al., 168 O. S. 560, the Supreme Court held:—

> "Where interstate commerce is involved and a labor union, through its members who are not former or present employees of an employer, engages in nonviolent picketing of such employer's premises to in-

duce the unionization of his employees, the National Labor Relations Act (Section 141 et seq., Title 29, U. S. Code, as amended) has exclusive application, and, by decisions of the Supreme Court of the United [fol. 69] States interpreting such act, state courts lack the power and jurisdiction to intervene",

The Court of Appeals of Lucas County in December, 1959, in Sherlock Baking Company vs. Bakery Drivers Union Local (unreported) held to the same effect.

In view of the above cases and the decisions of the Supreme Court of the United States upon which they are based, the petitioner, Merritt W. Green II, had a valid legal foundation for his opinion that the Common Pleas Court had no jurisdiction of the subject matter and had a valid arguable issue on the question as to whether or not the restraining order involved herein was void. It was his duty as a lawyer therefore, in my opinion, to so advise the head of the Longshoremen's Union in Chicago and its general counsel in Chicago and such of the individual defendants as might ask him concerning the same.

The record in this matter from its beginning to its end is such that neither the petitioner, his attorneys, nor the trial court have any reason to be proud. It shows a developing clash of personalities, much argument over unimportant or irrelevant matters, a complete forgetting of the main issue and a run away on a tangent. However, there is practically no controversy or dispute over the main facts, and no denial at all over what I consider to be the controlling facts.

As I read this record the decision of the union to continue picketing was made by the top officials and general counsel in Chicago. At Page 35 of the June 7th hearing Mr. Green stated as follows:

"At about 8:00 P. M. Friday evening I received a call from Mr. Friedman who advised me that the union officials had considered the matter in detail and had [fol. 70] concluded that on the basis of my report to them that their only possible course was to continue the picketing. I thereupon called the union hall and told

them of the decision of the officials and asked them to communicate this information to the pickets.

However it is true that at the hearing before Judge McCabe, in the midst of an exciting hearing and considerable confusion, and in an effort to get down to the business at hand—that of dealing with the contempt of the four pickets which he had voluntarily brought into court—Mr. Green did, big-heartedly and, in my opinion, contrary to the record, assume such responsibility.

The acceptance of this responsibility was a direct result of a conference and a firm agreement reached in Judge McCabe's office on May 31st between Mr. Green, Mr. Ragan (the opposing counsel) and Judge McCabe, as set forth by the following on pages 37-39 of the June 7th hearing and which is not denied:

"Mr. Ragan opened the discussion and he and the Judge talked for some time during which conversation the court concluded that it did not intend to reform the contract. Feeling it necessary to advise the court of my position on the jurisdictional matter involved I interrupted the conversation and asked if I could say a few words, a request Judge McCabe graciously granted. I attempted to explain the matter to him pointing out that I was there only to object to the jurisdiction of the court and that my prime interest was to have the matter heard so that we could either appeal it to get it before the N.L.R.B. or get it where it belonged. Judge McCabe suggested that I was ob- [fol. 71] sessed with this point and Mr. Ragan suggested that I file a motion to vacate the restraining order."

The Court: That's right.

Mr. Green: "I thereupon told the Court that I had a motion to vacate prepared and would gladly file it immediately if I could obtain an early hearing. The court flatly refused saying that he would not hear the motion until the restraining order was obeyed. I then asked Judge McCabe that if the restraining order was

obeyed would it be possible to obtain a hearing within the week and he replied that it would not.

"Mr. Ragan then suggested that as an alternative that I agree to submit to the court the four signators of the agreement to be dealt with on contempt. After some discussion I agreed to do so and stated to both Judge McCabe and Mr. Ragan that I would gladly stipulate all matters necessary to establish the contempt so that I could immediately appeal the decision or file habeas corpus proceedings. (Emphasis added.)

"The entire atmosphere of the meeting was light and agreeable and I was convinced that both the Judge and Mr. Ragan were aware that I had consented to bring these men before the court and stipulate the essential matters for the express purpose of testing the validity of the Court's order and its jurisdiction over the subject matter. So far as I was concerned the matter was clear cut and the hearing the following day was to be short and to the point. To that end I prepared the necessary habeas corpus proceedings."

The following day, June 1st, all of the above parties appeared in court as agreed upon and the petitioner was [fol. 72] accompanied by the four pickets he had agreed to produce. However, the hearing deteriorated into a wrangle as to the court's jurisdiction to issue the restraining order, the propriety of the court's refusal to grant a hearing to the defendants either before or after issuing the order, the failure to file a motion to dissolve the restraining order and many other matters, notwithstanding the business at hand was the alleged contempt of the four defendants as agreed upon the day before.

The record does show however that at one point Mr. Green addressed the court as follows:

"Mr. Green: You are sure you could not cite them for contempt now, Your Honor! The only thing I want here is that these parties may be thrown in jail and get them out on habeas corpus."

An adjournment was taken to Friday, June 3rd, when evidence was submitted showing that the picketing was

still continuing but no finding was made as to the guilt or innocence of the four defendants. In fact they were completely forgotten and the petitioner as their attorney was then charged with contempt and the matter adjourned to June 7th.

It was never established by any evidence whether the four pickets acted upon the advice of the petitioner Mr. Green, the top officials of the union in Chicago, the general counsel in Chicago, or any one else.

The real reason why these four defendants were not sentenced and sent to jail so that the whole thing could be tested by habeas corpus as agreed upon the day before remains, to me, a mystery.

[fol. 73] In my opinion there is a vast distinction between the actions of an attorney who is openly contumacious or rebellious over an order of Court and advises or aids and abets his client in disobeying it and the actions of an attorney who has valid legal ground for believing the order of the Court to be void for lack of jurisdiction and advises his client to resist the order, so that, in the orderly administration of justice, the question of the Court's jurisdiction may be determined. This is especially so, where, as in this case, the opposing counsel and the Court know what is being done and the reason for it. I would not condone the one and I can not condemn the other.

I can not conscientiously vote to find the petitioner guilty of contempt under these circumstances and I therefore dissent.

[fol. 74]

IN COURT OF APPEALS OF LUCAS COUNTY, OHIO

(SIXTH APPELLATE DISTRICT)

No. 5338

In the Matter of the Petition for a Writ of Habeas Corpus for Merritt W. Green II

NOTICE OF APPEAL

The Petitioner hereby gives notice of appeal to the Supreme Court from a judgment rendered by the Court of Appeals of Lucas County in the above entitled cause, which judgment was journalized on the records of this Court on the 12th day of November, 1960. Said appeal is on questions of law. The appeal is to be taken to the Supreme Court of Ohio in a case originating in the Court of Appeals, Sixth Appellate District.

Merritt W. Green, Of Counsel

[fol. 75]

IN THE SUPREME COURT OF OHIO

Case No. 36830

In the Matter of the Petition for a Writ of Habeas Corpus for Merritt W. Green II.

Appeal from the Court of Appeals of Lucas County

Attorneys:

Merritt W. Green, 400 Security Bldg., Fred A. Smith, 707 Toledo Trust Bldg., Robert A. Burns, 5403 Summit Street, Toledo, Ohio; Irving M. Friedman, 7 So. Dearborn, Chicago, Illinois.

Harry Friberg, Prosecuting Attorney, Ben Neidlinger, Asst. Pros. Attorney, Court House, Robert Ragan, 1111 Edison Bldg., Toledo, Ohio.

MEMORANDA OF PLEADINGS, &C., FILED, WRITS ISSUED, &C., JUDGMENTS, ORDERS AND DECREES

November 25, 1960	Notice of Appeal filed.
November 29, 1960	Leave granted to file Court of Appeals Transcript of Docket and Journal Entries, Original Papers and Transcript of Testimony instanter. /s/ Carl V. Weygandt, Chief Justice. Journal 43, Page 657.
November 29, 1960	Court of Appeals Transcript of Docket and Journal Entries, Original Papers and Transcript of Testimony filed.
November 29, 1960	Cause docketed.
December 2, 1960	Papers taken by Rodenfels. 1/18/61 Returned.
December 30, 1960	Entry extending time for filing printed record to January 28, 1961. /s/ Carl V. Weygandt, Chief Justice. Journal 44, page 1.
[fol. 76]	
January 17, 1961	Printed Record and Certificate of Service filed.
February 1, 1961	Printers receipted bill filed.
February 6, 1961	Entry extending time for filing appellant's brief to February 16, 1961. /s/ Carl V. Weygandt, Chief Justice. Journal 44, page 63.
February 15, 1961	Appellant's printed brief and certificate of service filed.
March 13, 1961	Appellee's typewritten brief and certificate of service filed.
March 30, 1961	Appellant's reply brief filed.
May 17, 1961	Judgment affirmed. Journal 44, page 206.

[fol. 77]

JOURNAL ENTRIES

Journal 43, Page 657
Entry

Leave is hereby granted to file Court of Appeals Transcript, Original Papers and Transcript of Testimony instanter. /s/ Carl V. Weygandt, Chief Justice.

Journal 44, Page 1
Entry

On request of printer, and for good cause shown, it is ordered that the time for filing printed record is extended to January 28, 1961. /s/ Carl V. Weygandt, Chief Justice.

Journal 44, Page 63
Entry

On request of printer and for good cause shown, it is ordered that the time for filing appellant's brief on the merits is extended to February 16, 1961. /s/ Carl V. Weygandt, Chief Justice.

Journal 44, Page 206
Appeal from the Court of Appeals of Lucas County.

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Lucas County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended taxed at $.....

Ordered, That a special mandate be sent to the Court of Appeals of Lucas County, to carry this Judgment into execution.

[fol. 78]

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE PETITION FOR A WRIT OF HABEAS CORPUS FOR GREEN.

OPINION—May 10, 1961

Contempt of court—Restraining order in an action issued against a party—Violation of such order by party on advice of his counsel—Claim court lacked jurisdiction—Counsel guilty of contempt, when.

1. The term, "contempt of court," embraces a despising of the authority, justice or dignity of a court, and one is guilty of such contempt whose conduct is such as tends to bring the administration of the law into disrepute and disregard or otherwise tends to impede, embarrass or obstruct the court in the performance of its functions.

2. Ordinarily, the Court of Common Pleas, a court of general jurisdiction, is competent to determine its own jurisdiction over the subject matter and parties in an action instituted therein and should be accorded fair opportunity to do so.

3. Affected persons having notice of a temporary restraining order forbidding the doing of certain acts alleged to be unlawful, which order is issued on a verified petition by the Court of Common Pleas, must obey the same until such order is set aside by orderly judicial process, and an attorney at law who deliberately advises his clients against whom the order is directed to disobey and disregard it, which they do upon such advice, is [fol. 79] guilty of contempt of court and may be punished therefor.

(No. 36830—Decided May 17, 1961.)

Appeal from the Court of Appeals for Lucas County.

This cause originated in the Court of Appeals for Lucas County upon the filing of a petition in habeas corpus on behalf of Merritt W. Green, II, a Toledo attorney. The petition is grounded on the claim that Green is (constructively)

imprisoned and restrained of his liberty in the county jail of Lucas County without legal authority.

Previously, a written charge of contempt of court had been lodged against Green under the provisions of Sections 2705.02 and 2705.03, Revised Code, by a judge of the Court of Common Pleas of Lucas County in a case pending in that court, numbered 188631 and entitled Toledo Marine Terminals, Inc., v. International Longshoremen's Assn., AFL-CIO, Local 1317-A, wherein the court granted an order restraining and enjoining the defendants and persons associated with them from committing certain acts involving the picketing of the plaintiff's premises in Toledo and interfering with its business operations. Such charge alleged that Green, legal counsel for defendants, with full knowledge of the restraining order did order and advise the defendants to disobey the same, and that the defendants, acting upon such counsel and advice, did so. Such charge further alleged that Green, after being notified in open court by the judge that he was in contempt of court, did and does continue to advise defendants to continue to disobey such order of the court. Green was then formally and specifically charged with being in contempt of court and a hearing was set for Tuesday morning, June 7, 1960.

Such hearing took place as scheduled, and Green was found guilty, sentenced to serve 10 days in the county jail and fined $500. The present action in habeas corpus followed. Upon the hearing before it, the Court of Appeals decided, by a two-to-one vote, against Green and found that he was not being unlawfully restrained of his liberty.

An appeal as of right brings the cause here for review. [fol. 80] Mr. Fred A. Smith, Mr. Robert A. Burns, Mr. Merritt W. Green and Mr. Irving A. Friedman, for appellant.

Mr. Harry Friberg, prosecuting attorney, and Mr. Ben Neidlinger, for appellee.

ZIMMERMAN, J.

Seeking a reversal of the judgment of the Court of Appeals, Green, hereinafter referred to as appellant, makes three principal contentions: (1) That the Court of Com-

mon Pleas in the case instituted in that court was without jurisdiction to issue the restraining order described since the controversy was exclusively within the jurisdiction of the National Labor Relations Board under the National Labor Management Relations Act of 1947 (Section 141 *et seq.*, Title 29, U. S. Code), and hence a contempt proceeding based on any violation by appellant of such restraining order was a nullity; (2) that advice given by appellant to his clients relating to the disobedience of such order was within appellant's rights and duties as an attorney and did not represent contempt of court; and (3) that appellant was denied due process of law in the hearing of the contempt charge against him.

In the original verified petition filed in the Court of Common Pleas, plaintiff, Toledo Marine Terminals, Inc., alleged that at the time of filing the petition no labor dispute existed between it and the defendant association; that a labor contract binding on both plaintiff and defendant association had been signed on May 26, 1960 (effective until April 1, 1961); that on the day of the filing of the petition, viz., May 27, 1960, the defendant association began picketing at the entrance to plaintiff's property in direct violation of such labor contract which provided, *inter alia,* that "there shall be no stoppage of work caused by lockouts, walkout, sit-down, or slow-up of any kind or nature whatsoever, during the term of this agreement"; that the conduct of the defendant association in picketing plaintiff's premises and calling a strike are illegal acts; that a continuation of the same, unless enjoined, will result in damage to the life and limb of plaintiff's employees and irreparable loss to plaintiff's property; and that such conduct has created a serious emergency of such a nature as to require the issuance forthwith of a temporary restraining order. [fol. 81] In such petition, plaintiff prayed as follows:

"Wherefore, plaintiff prays that pending final hearing and determination of the issues herein, a restraining order be issued forthwith against the defendants and each of them, their officers, agents, members and other persons associated with and acting in concert with the defendants, and all others to whom knowledge of this order should come, restraining and enjoining them • • • ."

Then followed a description of the acts sought to be enjoined in relation to the picketing of plaintiff's premises and other interferences with its operations.

On the same day, viz., May 27, 1960, the court issued the restraining order as prayed for. At a hearing held on June 1 and 3, 1960, on charges of contempt brought against certain of those connected with the defendant association who were alleged to have disobeyed the court's restraining order, and again on June 7, 1960, at the hearing of the charge of contempt against appellant, the evidence established that appellant deliberately advised his clients to disobey the court's restraining order. During the hearing on June 1 and 3 the following took place:

"The Court: I want to know from them [those charged with contempt] before that can be done [an appeal], give them an opportunity to purge themselves. • • • I want them to explain to me why they violated the order of the court. • • • I want them to tell me whether they just did that or whether they were told by some one to do that; I want to know.

"Mr. Green [appellant herein]: I can advise the court now that they were told by me.

"• • •

"The Court: • • • The opportunity is always given, of course, to any one who has violated an order of the court, to purge themselves if they choose to do so; so I think they [the ones charged with contempt] should be called upon; well, I don't know whether they are represented by any one or not.

"• • •

"Mr. Green [appellant herein]: They are represented.

"The Court: By an attorney?

"Mr. Green: They haven't taken my license away yet. [fol. 82] "The Court: Well, what do you propose to do?

"Mr. Green: If the court please, assuming they are resting, I propose to rest also, Your Honor. We are really here in a criminal proceeding and my clients are not required to testify in such a general action, they are not required—

"The Court: You also advised them to violate an order of the court, too.

"Mr. Green: I did."

At the contempt hearing on June 7, 1960, Merritt W. Green, appellant's associate in the law practice and one of his attorneys, read from a written statement prepared by appellant and containing the language, "that regardless of the private opinions of the court respecting the validity of the contract that the court had no jurisdiction over this matter and that he was forcing us to advise our clients • • • of their rights not to obey the order."

In its broad sense, a contempt is a disregard of, or disobedience to, the order or command of a public authority, legislative or judicial. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice or dignity of a court; and one is guilty of contempt whose conduct is such as tends to bring the administration of the law into disrespect and disregard or otherwise tends to impede, embarrass or obstruct the court in the performance of its functions. 11 Ohio Jurisprudence (2d), 90, Section 2; 12 American Jurisprudence, 389, Section 2.

This statement is applicable with particular force to an attorney at law. An individual against whom an order of a court is directed may violate such order and properly urge in his defense in a contempt proceeding that the order is void. But does not an attorney stand in a somewhat different position? He is an officer and arm of the court and as such has a duty to recognize and uphold the orders of the court as long as such orders stand. Consequently, an attorney who brashly advises his client to disobey an existing court order is in contempt of court notwithstanding any vulnerability that may attach to such order.

But aside from such observations, on its face the petition filed in the Court of Common Pleas by the Toledo [fol. 83] Marine Terminals, Inc., against the International Longshoremen's Association and others, does not disclose that the court lacked jurisdiction to entertain the same. The restraining order issued on the petition was preliminary and temporary in nature and *no motion was filed to dissolve it nor was any other instrument interposed challenging the court's jurisdiction.* Usually and in the first instance, a court of general jurisdiction, such as the Court of Common Pleas, is competent to determine its own jurisdiction (14 Ohio Jurisprudence [2d], 517, Section 100) and should

be accorded fair opportunity to do so. It appears to us that appellant assumed too much too soon in deciding for himself that the court was without jurisdiction and in advising his clients to act on his decision in defiance of the court's order.

It is to be noted that the petition filed in the Court of Common Pleas on which the restraining order was based alleged the imminence of violence in connection with the picketing of plaintiff's premises. Even in labor disputes where the federal labor relations statutes are applicable and exclusive, the Supreme Court of the United States has held that state courts possess the authority to intervene to enjoin mass picketing or picketing accompanied by violence and intimidation. Annotation, 2 L. Ed. (2d), 1636.

The Supreme Court of the United States has also said that a court possesses the power to determine its own jurisdiction, that a temporary restraining order issued by the court must be obeyed regardless of the final jurisdictional determination, and that one who disobeys such an order does so at his peril and may be amenable to criminal proceedings in contempt. *United States* v. *Shipp,* 203 U. S., 563, 51 L. Ed., 319, 27 S. Ct., 165, 8 Ann. Cas., 265; *United States* v. *United Mine Workers of America,* 330 U. S., 258, 91 L. Ed., 884, 67 S. Ct., 677.

Or stating it a little differently, affected persons having notice of a restraining order issued on a verified petition or complaint by a court of general jurisdiction must obey the order until it is set aside by orderly judicial process, and deliberate disobedience of such an order while it is in force subjects the violators to contempt proceedings. See *Howatt* v. *Kansas,* 258 U. S., 181, 189, 66 L. Ed., 550, 559, 42 S. Ct., 277, 280; *Smotherman* v. *United States* [fol. 84] (C. C. A.—10), 186 F. (2d), 676; *In re Lord,* 255 Minn., 370, 377, 97 N. W. (2d), 287, 292; and *Aladdin Industries, Inc.* v. *Associated Transport, Inc.* (Tenn. App.), 323 S. W. (2d), 222, 228, certiorari denied, 361 U. S., 865, 4 L. Ed. (2d), 104, 80 S. Ct., 117.

We are, therefore, of the opinion that the Court of Common Pleas possessed the authority to cite appellant for contempt, and that, on proof thereof, punishment was imposable.

There is no denying that appellant possessed the right to advise his clients that in his opinion the Court of Common Pleas was without jurisdiction of the cause and acted beyond its powers in issuing the restraining order, but when he went further and told them to disobey the order, which they did, he laid himself open to the contempt charge.

As to the hearing had on such charge on June 7, 1960, it was not conducted with the decorum and restraint it should have been, but to say it was of such a character as to deny appellant due process of law is hardly justified. The contempt had already occurred as disclosed in the hearing on June 1 and 3, and the judge presiding over that hearing was the same judge who issued the restraining order and who conducted the proceedings on June 7.

We deplore an unfortunate situation of this kind and the acrimony which apparently developed between the judge and the appellant, but we find no sufficient reasons to reverse the judgment of the Court of Appeals. Therefore, that judgment is affirmed.

Judgment affirmed.

WEYGANDT, C.J., MATTHIAS, RADCLIFF and O'NEILL, JJ., concur.

TAFT and BELL, JJ., dissent.

RADCLIFF, J., of the Fourth Appellate District, sitting by designation in the place and stead of HERBERT, J.

BELL, J., dissenting:

I am in complete agreement with the statements in the majority opinion as to what constitutes contempt of court, and I certainly concur in the observation that the acrimony [fol. 85] which developed between the judge and the attorney was unfortunate. A tendency toward an apologetic attitude on the part of both might well have avoided the unfortunate circumstances which resulted in this litigation.

But my interpretation of certain portions of the record herein forces me to a conclusion different from that of the majority of the court. In my opinion there is a sufficient basis in the holdings of this court to justify the opinion

of the attorney that the Common Pleas Court had no jurisdiction of the subject matter. *Grimes & Hauer, Inc.*, v. *Pollock*, 163 Ohio St., 372; *Richman Brothers Co.* v. *Amalgamated Clothing Workers of America*, 168 Ohio St., 560. Convinced that he had, at least, an arguable issue on the question of the validity of the restraining order, it was his duty as a lawyer to so advise his clients.

The record indicates that, on the day *prior* to the first contempt hearing (the hearing at which the attorney and his clients were found guilty of contempt although no citation in contempt had then been issued for the attorney), the attorney, *at the suggestion of his opposing counsel and with the full knowledge of the court*, agreed to submit to the court his clients to be dealt with on contempt. At that time he stated that he "would gladly stipulate all matters necessary to establish the contempt so that I could immediately appeal the decision or file habeas corpus proceedings."

To subsequently hold him in contempt for actually doing what, with the knowledge of the court and opposing counsel, he had agreed to do appears to me to be carrying the processes of contempt to an end that is unwarranted in this situation.

Judge Younger, in his dissenting opinion in the Court of Appeals summed it up thus:

"In my opinion there is a vast distinction between the actions of an attorney who is openly contumacious or rebellious over an order of court and advises or aids and abets his client in disobeying it and the actions of an attorney who has valid legal grounds for believing the order of the court to be void for lack of jurisdiction and advises his client to resist the order, so that, in the orderly administration of justice, the question of the court's jurisdiction may be determined. This is especially so, where, as in this case, the opposing counsel and the court know what is [fol. 86] being done and the reason for it. I would not condone the one and I can not condemn the other."

TAFT, J., concurs in the foregoing dissenting opinion.

[fol. 87] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 88]

SUPREME COURT OF THE UNITED STATES

No. 312, October Term, 1961

In the Matter of the Petition for a Writ of Habeas Corpus for MERRITT W. GREEN, II, Petitioner.

ORDER ALLOWING CERTIORARI—November 6, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Ohio is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.